



Date: November 25, 2008

To: City Manager for Council Action

From: Director of Planning and Inspection

Subject: Planning Commission Recommendation to Adopt Resolutions to Certify Environmental Impact Report (EIR), Adopt Mitigation Monitoring and Reporting Program and Approve Statement of Overriding Considerations, Approve General Plan Amendment from Light Industrial Designation to Office/ Research and Development Designation (GPA #71), Approve Rezone from ML (Light Industrial) to PD (Planned Development), and Approve Development Agreement at 2600, 2800 San Tomas Expressway, and 2400 Condensa Street for Harvest Properties/NVIDIA (CEQ2008-01062/ SCH#2008052011, PLN2008-07176, PLN2008-07177, PLN2008-07179)

EXECUTIVE SUMMARY:

At a public hearing on November 19, 2008, the Planning Commission adopted a Resolution to certify the EIR for the San Tomas Business Park Campus Project and recommended that the Council approve the General Plan Amendment from Light Industrial designation to Office/Research & Development designation and approve the rezoning of 2600, 2800 San Tomas Expressway, and 2400 Condensa Street from Light Industrial to Planned Development and approve the Development Agreement. The phased project will be developed by Harvest Properties as a corporate campus for the NVIDIA Corporation.

The San Tomas Business Park Campus Project proposes three buildings to be up to 8 floors to accommodate up to 1,950,000 square feet of high-tech lab and office uses, with associated parking structures with up to 7,050 spaces and a pedestrian bridge over the San Tomas Aquino Creek. The development will replace existing office and industrial buildings on three parcels. A Development Agreement is proposed to allow phased development of three mid-rise to high-rise office buildings, associated facilities and integrated improvements, for office and high-tech lab facilities.

The Planning Commission recommends that the Council adopt the Resolution to certify the EIR and recommends approval of the General Plan Amendment, rezoning application and Development Agreement for the San Tomas Business Park Campus Project, as reflected in the minutes and in the Resolutions prepared for Council action. Certification of the EIR is inclusive of the Draft EIR, the Final EIR and any amendments to the EIR.

A newspaper notice of the General Plan Amendment and public mailings and posting of the EIR, rezoning and Development Agreement were provided for this Council hearing. Public agency comments have been submitted in response to the DEIR and responses are provided in the FEIR. The City did receive a response to the FEIR from the State Department of Transportation (DOT), on November 18th, 2008. The comment from the DOT and the response from the environmental consultant were provided at the Planning Commission meeting on November 19, 2008. The DOT letter and response are now incorporated as part of the FEIR.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

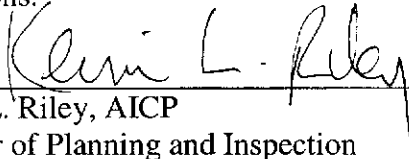
Approval of the project provides an opportunity for a new corporate campus in the City, including the potential creation of new jobs and increased City revenues, and the potential to take advantage of existing and future transit opportunities by concentrating jobs. Since new traffic associated with the additional building area has direct access from the site to regional roadways, impacts on local streets are minimized.

ECONOMIC/FISCAL IMPACT:

There is no cost to the City other than administrative staff time and expense.

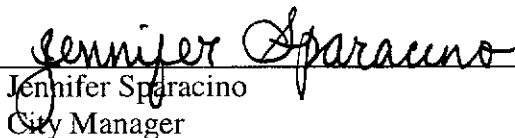
RECOMMENDATION:

That the Council, pursuant to Planning Commission recommendations, adopt Resolutions to: 1) Certify the EIR for the San Tomas Business Park Campus Project; 2) Adopt the Mitigation Monitoring and Reporting Program and Approve a Statement of Overriding Considerations; 3) Approve the General Plan Amendment from Light Industrial designation to Office/ Research and Development designation (GPA #71); 4) Approve the Rezone from Light Industrial to Planned Development; and 5) Approve and Pass-to-print an Ordinance for a Development Agreement at 2600, 2800 San Tomas Expressway, and 2400 Condensa Street to allow construction of a phased campus development consisting of three buildings to be up to 8 floors to accommodate up to 1,950,000 square feet of high-tech lab and office uses, with associated parking structures with up to 7,050 spaces, including a pedestrian bridge over the San Tomas Aquino Creek, subject to conditions.



Kevin L. Riley, AICP
Director of Planning and Inspection

APPROVED:



Jennifer Sparacino
City Manager

Attachments Related to this Report:

- 1) Planning Commission staff report of November 12, 2008 & November 19, 2008***
- 2) Planning Commission Excerpt Minutes of November 12, 2008 & November 19, 2008***
- 3) Department of Transportation letter dated November 18, 2008 and response from EIR Consultant***
- 4) EIR Resolution***
- 5) General Plan Amendment Resolution***
- 6) Rezoning Resolution***
- 7) Development Agreement Ordinance***
- 8) Development Agreement***

Exhibit A: Legal Description of Property

Exhibit B: Selected Pages of Development Plan

Exhibit C: Conditions of Approval

Exhibit D: Mitigation Monitoring and Reporting Program

Exhibit F: San Tomas Business Park Traffic Fair Share Mitigation and Cost



**CITY OF SANTA CLARA
PLANNING COMMISSION
STAFF REPORT**

① NOV. 12 + NOV. 19 Planning
Commission
Staff
Reports



**Agenda Item #10
File No: PLN2008-07176 thru 07180;
CEQ2008-01062; SCH#20080520111**

DATE: November 4, 2008

TO: Planning Commission

FROM: Director of Planning and Inspection

SUBJECT: San Tomas Business Park Campus Project **certification** of the Final Environmental Impact Report; **approval** of the General Plan Amendment from Light Industrial designation to Office/ Research and Development designation, and **approval** of the rezoning of the project site from ML-Light Industrial to PD (Planned Development), and **approval** of the Development Agreement to vest development rights and construct a phased development project.

PROJECT SUMMARY

Project Description: San Tomas Business Park Campus Project proposes three buildings to accommodate up to 1,950,000 square feet of high-tech lab and office uses on three parcels, with associated parking structures with up to 7,050 spaces; and including a pedestrian bridge over the San Tomas Aquino Creek. The development will replace existing office and industrial buildings on three parcels.

Project Applicant: Harvest Properties

Project Owner(s): Harvest 2400, LLC and Harvest-Granite San Tomas, LLC

Project Application(s): PLN2008-07176 (General Plan Amendment); PLN2008-07177 (Rezone ML to PD); PLN2008-07179 (Development Agreement); CEQ2008-01062 (EIR/ SCH#20080520111); PLN2008-07178 (Lot Line Adjustment); PLN2008-07180 (Architectural Review)

Project Location: 2600, 2800 San Tomas Expressway, and 2400 Condensa Street located on both sides of San Tomas Aquino Creek, south of Central Expressway.

Assessors Parcel Number(s): 224-11-065, 224-11-066, 216-02-128

Site Acreage, FAR and Lot Coverage: 35.6-acre site on three parcels, with a maximum FAR of 1.26 with approximately 40 percent lot coverage for all structures.

Existing General Plan Designation: Light Industrial Proposed General Plan Designation: Office/ Research and Development
Existing Zoning: ML - Light Industrial Zoning District Proposed Zoning: PD – Planned Development and Combined Zoning District
Existing Use: 690,550 square feet of office and light industrial uses Proposed Use: 1,950,000 square feet of office, research and development
Environmental Determination: Environmental Impact Report
Notification Radius: The notice of public hearing for this item was posted within 1,000 feet of the site and was mailed to property owners within a 1,000 feet radius of the project site. In addition, Notice of Hearings for General Plan Amendment #71 and the project was published in the Mercury Newspaper on November 1, 2008.
Project Planner: Yen Han Chen, Associate Planner
Staff Recommendation: Certify Final Environmental Impact Report (FEIR); Recommend City Council Approval of General Plan Amendment #71 from Light Industrial to Office/Research and Development, Rezoning from ML (Light Industrial) to PD (Planned Development), and Development Agreement to vest development rights
Report Approved By: <u>Kevin L. Riley</u> Date: <u>11/07/08</u>

EXECUTIVE SUMMARY

The project proposes a General Plan Amendment to Office/Research & Development and rezoning to PD-Planned Development to allow the demolition of the existing structures on the site and the construction of up to 1,950,000 square feet of office/industrial development in three buildings to be up to 8 floors and up to 132 feet in height. A Development Agreement is proposed to allow phased development of three mid-rise to high-rise office buildings, associated facilities and integrated improvements, for office and high-tech lab facilities. The project as a whole is known as San Tomas Business Park Campus Project. The complete administrative record for the project can be viewed during normal business hours at the Planning Division offices located at 1500 Warburton Avenue, Santa Clara, CA 95050.

PROJECT LOCATION AND BACKGROUND

The 35.6-acre project site is comprised of three developed parcels located on both sides of the San Tomas Aquino Creek channel, south of Central Expressway in the City of Santa Clara. One parcel (APN 216-28-128) is located on the west side of the creek channel immediately south of Condensa Street. The other two parcels (APNs 224-11-065 and 244-11-066) are

located on the east side of the creek channel between Central Expressway and Walsh Avenue. The project site is currently designated Light Industrial by the City of Santa Clara's adopted General Plan and is zoned ML – Light Industrial.

The property on the west side of the channel (2400 Condensa Street) is currently developed with an approximately 215,550 square foot four-story office/industrial building and associated surface parking lots. The property on the east side of the channel (San Tomas Business Park) is currently developed with 10 two-story office/industrial buildings totaling approximately 475,000 square feet and associated surface parking. The project proposes to demolish all of these existing buildings.

SITE CONTEXT

Surrounding Land Uses

Development in the project area is mostly office and light industrial uses with building heights up to four stories tall. The project site is bound by Central Expressway to the north, single-story industrial buildings to the west, Walsh Avenue and a two-story industrial park complex to the south, and San Tomas Expressway to the east. Near the northeast corner of the project site, Central Expressway is slightly elevated relative to the project site as it crosses over San Tomas Expressway. On the north side of Central Expressway are several one-, two-, and three-story industrial/office buildings surrounded by surface parking lots. East of San Tomas Expressway is a large three-story office campus. South of Walsh Avenue are more of the same low density one- and two-story industrial buildings as are found to the east and north of the project site.

Surrounding General Plan and Zoning

The surrounding area is currently designated Light Industrial in the City of Santa Clara General Plan and zoned ML – Light Industrial to the north, south, west and zoned PD towards the east. This General Plan designation and zoning district allows campus-like environments of one- and two-story buildings on large lots for electronics, manufacturing, research and development, and administrative facilities. Office uses, in support of on-site or nearby manufacturing activities, are also permitted where adequate employee parking and recreational space is provided. Parking structures and retail uses are also allowed. The Light Industrial land use designation and zoning has a building height limit of 70 feet. The land use designation and zoning allow building lot coverage equal to 75 percent of the total site area.

PROJECT DESCRIPTION

Site Design and Architecture

The building architecture is designed to create a dynamic new addition to Santa Clara offering bold architectural forms with high quality materials. The curved exterior of the buildings will transform as light passes along the exterior wall surfaces. Building entrances are defined by large atriums, accented by projecting canopies. Materials on the buildings include tinted glass, colored opaque glass, painted aluminum panels and translucent glass. The stair and elevator towers on each parking structure are clad with tinted glass and painted aluminum, the same materials selected for the buildings. The plans include a lobby and elevated bridges connecting these towers which are proposed at up to 132 feet in height.

Circulation and Parking

Direct access to the project site is provided via Condensa Street, Walsh Avenue and San Tomas Expressway. The access to and from San Tomas Expressway is right turn only. A new pedestrian bridge is proposed over San Tomas Aquino Creek to link the entire campus.

The western portion of the project site will have four driveways from Condensa Street as currently exists on-site. These driveways will connect to a small interior roadway to provide access to the parking structure and connect to surface parking areas. The eastern portion of the project site will have one driveway entrance from Condensa Street via an existing private automobile bridge over the creek. In addition, the eastern portion of the project site will have one driveway from San Tomas Expressway and two driveways from Walsh Avenue. There will be no direct access to the project site from the Central Expressway off-ramp. Each of the driveways will connect to a single interior access road that loops through the site and connects each of the parking structures and surface parking areas. The interior access roads and driveways widths will vary with a minimum of 24 feet and a maximum width of 34 feet.

Parking will be provided in surface lots and in three parking structures. The parking structures have up to two levels of below grade parking and up to five levels of above grade parking at a maximum height of 90 feet. The smallest of the three parking structures is proposed south of the single office building on the west side of the creek channel. The other two parking structures will be located on the east side of the creek, one along the northern property line and one along the southern property line. The parking structures will provide up to 6,474 parking spaces, and the surface lots will provide up to 576 parking spaces, for a total of up to 7,050 parking spaces on-site.

The parking spaces are based on a uni-stall size of 8'-6" x 18'-0", with a 24'-0" two-way drive aisle, rather than a combination of standard and compact spaces.

Trees and Landscaping

The landscape concept sweeps across the entire site to create a single coherent site design and emphasizes three critical components in the site design:

1. The organic and fluid shaping of the building mass;
2. The larger, regional, context of the San Tomas Aquino Creek Channel, Central and San Tomas Expressways; and,
3. A long-term strategy for Sustainability and Storm Water Management.

Approximately 945,949 square feet (61 percent) of the project site will be open space. Of the 945,949 square feet of open space, approximately 434,206 square feet (28 percent) will be landscape area and the remaining 511,743 square feet (33 percent) will be walkways and other hardscape (not including parking lots, access roads, or driveways). The project proposes to remove all the existing trees on-site. Consistent with the City's Design Guidelines, the project will replace the mature trees at a 1:1 ratio with minimum twenty-four (24) or thirty-six (36) inch box specimens. The project proposes to also provide some 48-inch box specimen trees.

Public Improvements

Pedestrian facilities are limited in the project area and are comprised of sidewalks and crosswalks. The Developer is required to install a public sidewalk connecting Condensa Street to San Tomas Expressway. The sidewalk begins at the Condensa Street cul-de-sac and follows the contours of the connector ramp between eastbound Central and southbound San Tomas Expressway along the northerly property line of the development. The sidewalk continues along the west side of San Tomas Expressway to meet the existing sidewalk at the bus stop on San

Tomas Expressway near Walsh Boulevard. The project is also required to install a bus stop pavement pad along the project site on San Tomas Expressway, north of Walsh Avenue, and provide an easement for bicycle and pedestrian use of the private bridge over the creek between the Condensa Street cul-de-sac and the east campus. The project will have access to the San Tomas Aquino Creek Trail currently under construction between Scott Boulevard and Cabrillo Avenue.

GENERAL PLAN AND ZONING DISTRICT CONFORMANCE

The project proposes a General Plan amendment to Office/Research and Development and a rezoning to PD–Planned Development to allow the demolition of the existing structures on the site and the construction of three mid-rise industrial/office buildings of up to 132 feet in height, and three parking structures ranging up to 90 feet in height. Permitted uses on the site under the PD Zoning will include offices and high-tech lab facilities.

Consistent with the surrounding area, the project site is currently designated Light Industrial in the City of Santa Clara General Plan and zoned ML–Light Industrial, which allow campus-like environments of one-and two-story buildings on large lots for electronics, manufacturing, research and development, and administrative facilities. Office uses, parking structures and retail uses are also allowed. The Light Industrial land use designation and zoning have a building height limit of 70 feet and maximum lot coverage of 75 percent of the total site area.

The proposed development includes buildings up to 132 feet tall with lot coverage of approximately 40 percent. As such, the project is inconsistent with the current land use designation and zoning district due to the proposed height of the buildings and the exclusive office use. All other aspects of the proposed project are consistent with both the current land use designation and zoning.

The proposed land use designation, Office/Research and Development, is encouraged but not restricted to the area north of U.S. 101 due to the close proximity to light rail and the ACE train. A full range of office uses is encouraged under this land use, with the primary intent of providing support services to the Silicon Valley. Prototype research and development uses are allowed along with limited manufacturing uses. Employee recreational areas, as well as public courtyards and plazas are encouraged and parking areas should be designed to not be obtrusive, but still easily accessible from the public street. Buildings are limited in height to 70 feet unless special designs or mixed uses are proposed and a rezoning to Planned Development is obtained. The project's proposed General Plan Amendment and Planned Development zoning includes the necessary special design, consistent with the Office/Research and Development designation, because it would create a campus-like development.

Comparison Table of Development Standards for Existing and Proposed Zonings

	EXISTING ML ZONING DEVELOPMENT STANDARDS	PROPOSED PD ZONING DEVELOPMENT STANDARDS
Max DU/ Square Feet		1,950,000 square feet
Max Building Height	70 feet	132 feet

	EXISTING ML ZONING DEVELOPMENT STANDARDS	PROPOSED PD ZONING DEVELOPMENT STANDARDS
Max Building Coverage	75 percent	75 percent
Min Landscape Coverage	Minimum of at least 10 percent of required parking area.	Minimum of at least 10 percent of required parking area
Min Lot Size Area Width Depth	20,000 square feet 100 feet None specified	20,000 square feet 100 feet None specified
Min Building Setbacks Front Rear Side	15 feet 0 feet 0 feet	15 feet 0 feet 0 feet
Min Parking Ratio	1/300 Office & Commercial Uses 1/750 Industrial Use	1/300 Office/ Research and Development
Parking Stall Drive Aisle	Standard Stall 9'-0" x 18'-0" Two-way drive aisle width 25'-0"	Uni-Stall 8'-6" x 18'-0" Two-way drive aisle width 24'-0"

CONFORMANCE WITH OTHER APPLICABLE PLANS & GUIDELINES

Consistency with Design Guidelines

The proposed project will allow three office buildings with two towers each of up to 132 feet tall and parking structures on a site that is currently developed with two- and four-story industrial/office buildings and surface parking. While the industrial and commercial development near the project site is substantially smaller in scale than the proposed project, there are mid-rise office buildings in the general vicinity of the project site north of Highway 101. In addition, the construction of the towers and parking structures will result in a lower building coverage area and allow more open space areas on the project site. With the proposed project, the site would be approximately 40 percent covered by structures (including parking garages).

The visual character of the area as viewed from Central Expressway, San Tomas Expressway, and Walsh Avenue will be altered somewhat by replacing the existing industrial park development with taller office buildings and parking structures. Nevertheless, the project is still visually compatible with surrounding land uses and will be more densely landscaped than the surrounding development.

Prior to the issuance of building permits, the Architectural Committee will be reviewing the site design, building architecture, elevations, building materials, or other design details. Also, in order for the project to be consistent with the City of Santa Clara's Design Guidelines, the following enhancements should be included in to the project design:

1. Landscape designs should complement building, pedestrian and driveway entrances;
2. Front yard and all street front landscaping areas, including landscape areas within the public right-of-way, should be planted to partially screen parking areas; and,
3. Enhance the attractiveness of the streetscape.

The project will apply for LEED certification, which is a sustainable building practice that promotes energy conservation in design, materials and use. The applicant has committed to some specific measures at this time to achieve LEED certification. The list of LEED Certification measures provided in the EIR is not a comprehensive list but a general list of measures likely to be included. Other measures, which have not yet been fully defined, may also be included. Final building design, including all green building measures, will be approved prior to final architectural review and issuance of building permits.

Exterior signage, which includes the name of the developments, leasing and marketing information, shall complement the design of the building and landscaping. The proposed zone change would allow imaginative planning and design concepts to be utilized, including signage that would otherwise be restricted in other zoning districts by design, size, height or setback. The City's Architectural Committee in approving a comprehensive signage program looks for consistency and elements complementary to the building architecture and landscape.

The City's Design Guidelines require that mature trees that are proposed to be removed be replaced on-site at a 1:1 ratio. The project proposes to remove all of the existing trees on the project site. The City's Design Guidelines call for minimum twenty-four (24) or thirty-six (36) inch box to replace mature trees which has been or is proposed to be removed. To comply with the City's Design Guidelines, the project proposes to replace on-site trees with 24-inch to 48-inch box specimen trees. The concept landscape drawings are included in the development package and will be reviewed by the City's Architectural Committee.

ENVIRONMENTAL REVIEW

Environmental consultants David J. Powers and Associates, Inc prepared a Draft Environmental Impact Report (DEIR). The DEIR and Notice of Availability were circulated and noticed on August 26 for a 45-Day review period for public comment and closed on October 9, 2008, in accordance with California Environmental Quality Act (CEQA) requirements. The Planning Department received agency comments, in response to the DEIR, from the Department of Transportation – Division of Aeronautics, California Department of Transportation, City of San José, City of Sunnyvale, Santa Clara Valley Water District, Santa Clara Valley Transportation Authority, and Norman Y. Mineta San José International Airport.

A Final Environmental Impact Report (FEIR) was subsequently prepared and is currently being circulated for a 10-day review period, in accordance with CEQA. Copies of the DEIR, FEIR are available in the Planning Division office at City Hall.

The DEIR found that the proposed project would have the significant unavoidable impacts that can not be mitigated to a less than significant level if the project is implemented, because no feasible mitigation has been identified.

1. Land Use – Implementation of the proposed project will result in a net increase in industrial/office space within the City of Santa Clara. Because Santa Clara has more jobs than housing growth, the project would exacerbate the existing jobs/housing imbalance;
2. Transportation – Implementation of the proposed project would result in a significant Level of Service (LOS) impacts on intersections (For a complete list of the impacts and proposed mitigations, see EIR Section 4.8.3); and,

3. Cumulative Impacts – The proposed project will result in significant cumulative transportation, Air Quality, and Global Climate Change impacts. (See EIR Section 6.0).

The DEIR also identifies potential impacts to hydrology, vegetation and wildlife, hazardous materials, cultural resources, and air quality that, with the incorporation of mitigation measures, will be reduced to less than significant. A detailed discussion of the potential impacts and mitigation measures to be applied to the project are specified in the environmental document.

In considering a project, CEQA requires decision-makers to balance economic, legal, social and technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. To approve a project that has a significant unavoidable environmental impact, decision-makers must make findings, supported by substantial evidence, that the specific economic, legal, social, technological or other benefits of a proposed project outweigh the unavoidable environmental affects.

CEQA also requires that an EIR identify alternatives to the project as proposed. Per CEQA Guidelines, the EIR must identify alternatives that "would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project". The significant impacts identified in this EIR resulting from the proposed project include significant unavoidable traffic and air quality impacts, and induced population growth resulting from increasing Santa Clara's jobs/housing imbalance. There are also cumulatively significant impacts of increased traffic congestion and increased air pollution, plus a cumulatively considerable contribution to global climate change which is linked to the traffic and air pollution.

Since the traffic impacts result from the volume of traffic generated by the proposed level of development on the project site, and the induced growth also results from the substantial increase in jobs proposed by this redevelopment, the logical way to reduce those impacts would be to reduce the amount of development. In addition, the vehicular air pollutant emissions are reduced proportionately with reductions in project size and vehicle trip generation. A reduced density alternative is discussed in Project Alternatives section of the EIR. The global climate change impacts are also associated with the location of the substantial number of jobs in Santa Clara, a city with a significant job/housing imbalance. Any alternative location in Santa Clara would also have a similar result, so an alternative location that is within the City's control would have similar impacts. A detailed discussion of the project alternatives is provided in the EIR for review.

The stated objectives of the project proponent are to:

1. Create a cohesive campus environment for future corporate tenant(s) that includes flexible and adaptable space for growth;
2. Redevelop an underutilized site into a more efficient, economically viable campus;
3. Provide increased density in a geographically constrained area to retain jobs, and foster job growth within the City of Santa Clara; and,
4. Develop a financially solvent project.

The stated objectives of the City are to:

1. Promote quality job growth within the City and region; and,
2. Support campus development that can take advantage of transit opportunities by concentrating jobs near existing transit facilities.

Neither the "No Project Alternative" nor "Reduced Density Alternative" achieves the objectives of the project proponent or the City.

PUBLIC INPUT

Summary of Noticing, Community Meetings and Input

The notice of public hearing for this item was posted within 1,000 feet of the site and was mailed to property owners within 1,000 feet. In addition, Notice of Hearings for General Plan Amendment #71 and the project, was published in the Mercury Newspaper on November 1, 2008.

Prior to any amendment to the General Plan, the City contacts those California Native American tribes that are on the contact list maintained by the Native American Heritage Commission for the purpose of preserving or mitigating impacts to places, features, and objects that are located within the City's jurisdiction. In response, the California Native American Heritage Commission provided list of Native American Tribes on July 25, 2008. Notices were sent out on July 28, 2008 to the following California Native American Tribes: "The Ohlone Indian Tribe", "Muwekma Ohlone Indian Tribe of the SF Bay Area", "Indian Canyon Mutsun Band of Costanoan", "Amah/MutsunTribal Band", and "Amah MutsunTribal Band". No requests for consultation have been received from the Native American Tribes.

Study sessions were held at Planning Commission on September 24, 2008 and City Council on September 30, 2008. Harvest Properties, NVIDIA Corporation and Korth Sunseri Hagey Architects presented the proposed design and site plans.

Public agency comments have been submitted in response to the DEIR and responses are provided in the FEIR.

ADVANTAGES AND DISADVANTAGES

Approval of the project provides an opportunity for a new corporate campus in the City, including the potential creation of net new jobs and increased City revenues, and the potential to take advantage of existing and future transit opportunities by concentrating jobs. Since new traffic associated with the additional building area has direct access from the site to regional roadways, impacts on local streets is minimized.

ECONOMIC / FIACAL IMPACTS

There is no cost to the City other than administrative staff time and expense.

REQUIRED FINDINGS

Findings provide a means to link the available evidence with the decision to approve or deny the application. If this request is favorably considered, the preponderance of evidence should support the following or similar findings to approve the **rezoning** request. The following evidence and facts provide a basis for the recommendation/action on this request:

- a) The existing zoning is inappropriate or inequitable, in that: The existing zoning would not allow the increase building height from one- and two-story development to six- and eight-story construction that reflect current market demand, property values, and land and development costs that require land to be used more efficiently and at higher densities in the Bay Area.
- b) The proposed zone change will conserve property values; protect or improve the existing character and stability of the area in question; and will promote the orderly and beneficial development of such area, in that: The project would locate an industrial office campus development in proximity to workforce housing, commercial uses, services and major transportation corridors.
- c) The proposed zone change is required by public necessity, public convenience, or the general welfare of the City, in that: The project site is located in an urbanized area served by existing municipal services, and the physical development of the project site would localize employment in a central geographic area.
- d) The proposed zone change would allow imaginative planning and design concepts to be utilized for that would otherwise be restricted in other zoning districts, in that: The zone change would allow flexibility in the development standards associated with building heights that support the benefits of green building construction and the proposed LEED certification design for a sustainable building that promotes energy conservation.

RECOMMENDATION

Based on the evidence and findings in this Staff Report for PLN2008-07176 (General Plan Amendment); PLN2008-07177 (Rezone ML to PD); PLN2008-07179 (Development Agreement); CEQ2008-01062 (EIR/ SCH#20080520111), located at 2600, 2800 San Tomas Expressway, and 2400 Condensa Street, it is recommended that the Planning Commission recommend that the Council:

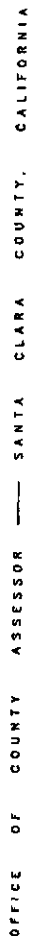
- 1. Adopt Resolution to Certify the EIR and find it in conformance with CEQA;
- 2. Approve the General Plan Amendment #71 to change the designation from Light Industrial to Office/Research and Development;
- 3. Approve the Rezone from ML-Light Industrial to PD-Planned Development in conformance with the Development Plan, and subject to Conditions of Approval; and,
- 4. Approve and Pass-to-Print an Ordinance for a Development Agreement

ATTACHMENTS TO STAFF REPORT

- a. Planning Commission Resolution with property description attached Exhibit A (Available on November 19, 2008)
- b. Development Plan
- c. Conditions of Approval
- d. Mitigation Monitoring & Reporting Plan
- e. Development Agreement with attachments
- f. Correspondence as of November 5, 2008
- g. Draft EIR (Previously Distributed) and Final EIR

I:\PLANNING\2008\Project Files Active\PLN2008-07176 thru 07180 2600 & 2800 San Tomas Expwy & 2400 Condensa St\Harvest PC Staff Report\Harvest PC Staff RPT 11062008.doc







City of Santa Clara
Aerial Photo Map
San Tomas Business Park Campus Project
November 6, 2008

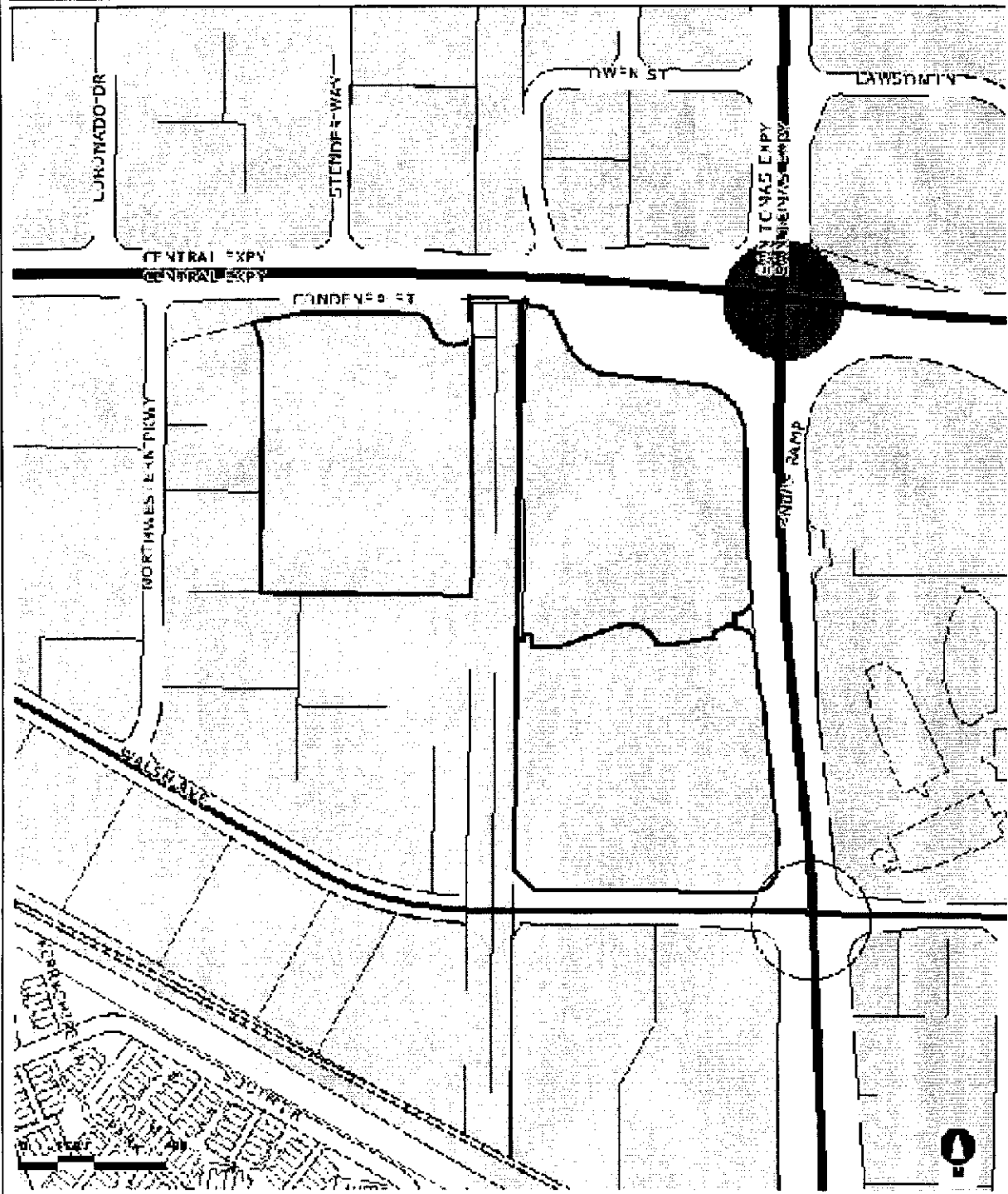
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City of Santa Clara
General Plan - Existing
Light Industrial Designation
November 6, 2008

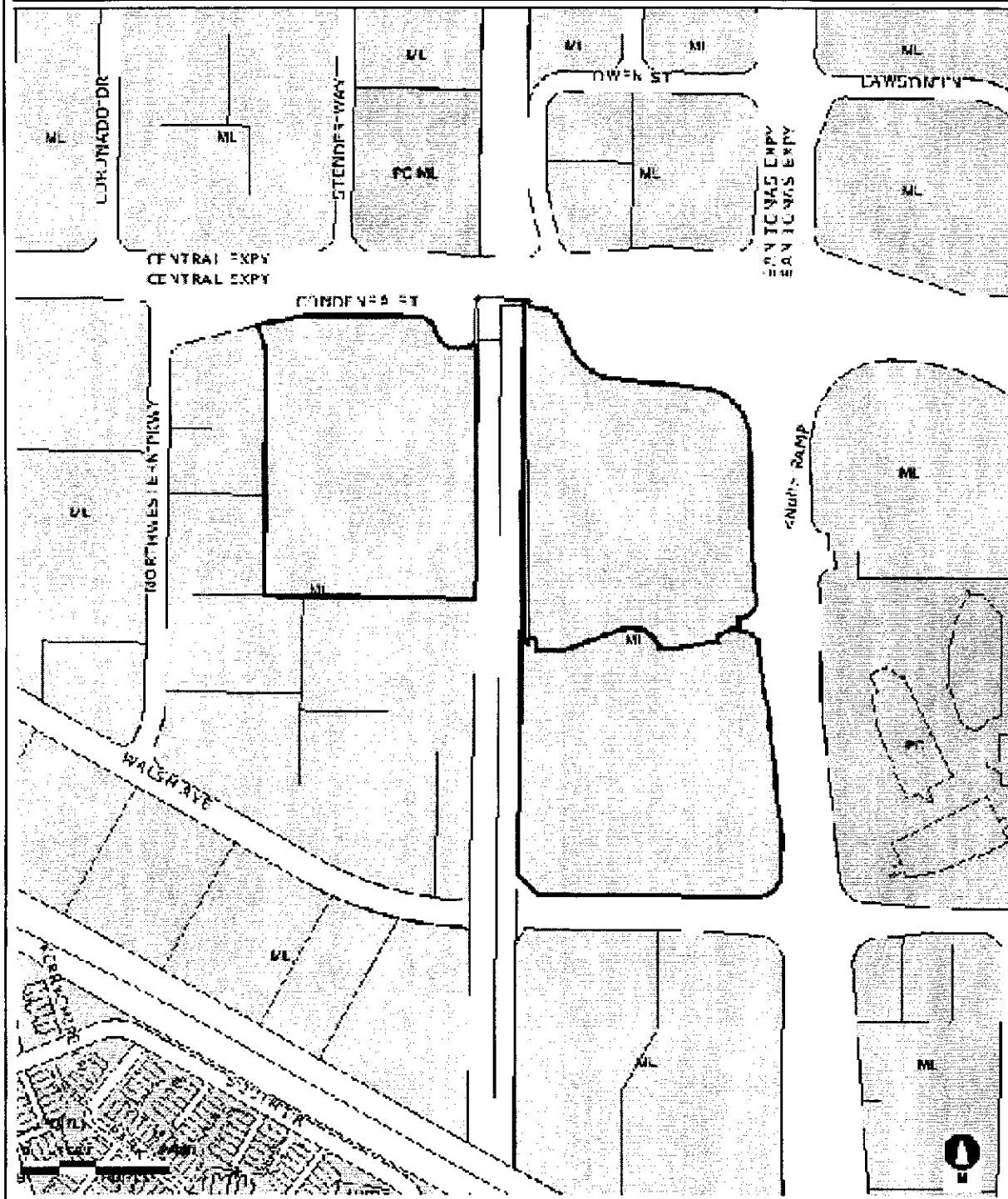
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City of Santa Clara
Zoning Map
ML - Light Industrial
November 6, 2008

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**ATTACHMENT A
PLANNING COMMISSION RESOLUTIONS
with
PROPERTY DESCRIPTION**

Available on November 19, 2008

**ATTACHMENT B
DEVELOPMENT PLAN**

City Council
December 2, 2008

Refer to
Development Agreement Resolution
Attachment 7
For this Exhibit

**ATTACHMENT C
CONDITIONS OF APPROVAL**

City Council
December 2, 2008

Refer to
Development Agreement Resolution
Attachment 7
For this Exhibit

**ATTACHMENT D
MITIGATION MONITORING & REPORTING PLAN**

City Council
December 2, 2008

Refer to
Development Agreement Resolution
Attachment 7
For this Exhibit

**ATTACHMENT E
DEVELOPMENT AGREEMENT WITH ATTACHMENTS**

City Council
December 2, 2008

Refer to
Development Agreement Resolution
Attachment 7
For this Exhibit



**CITY OF SANTA CLARA
PLANNING COMMISSION
STAFF REPORT**

Nov. 19



Agenda Item #9

**File No: PLN2008-07176 thru 07180;
CEQ2008-01062; SCH#20080520111**

DATE: November 14, 2008

TO: Planning Commission

FROM: Director of Planning and Inspection

SUBJECT: San Tomas Business Park Campus Project **certification** of the Final Environmental Impact Report; **approval** of the General Plan Amendment from Light Industrial designation to Office/ Research and Development designation, and **approval** of the rezoning of the project site from ML-Light Industrial to PD (Planned Development), and **approval** of the Development Agreement to vest development rights and construct a phased development project.

EXECUTIVE SUMMARY

On November 12, 2008, the Planning Commission opened the public hearing. In accordance with CEQA, a Final Environmental Impact Report (FEIR) was prepared and is currently being circulated for a 10-day review period, the review period will end on November 17, 2008. As of the preparation of this report no additional public correspondence, nor public agency comments have been received by the Planning Division.

At the November 12, 2008 Planning Commission, Harvest Properties, NVIDIA Corporation and Korth Sunseri Hagey Architects presented the proposed project. Mr. Park, a resident of Santa Clara, spoke to traffic impacts, parking standards and proposed mitigations measures. Commissioner Stattenfield asked for clarification on the recommended project mitigation measure which propose to convert the existing HOV lane on eastbound Central Expressway to a mixed-flow lane. There was also discussion on the definition of "Average Delay" and "Critical Delay" of traffic, and the cumulative impacts of associated with other proposed and approved projects. The Planning Commission asked for information, if available, on the LOS after improvements are completed on San Tomas Expressway.

The Planning Commission also asked for clarification on Tier 1A Projects (i.e. what is the basis for the listed Project Mitigation Measures) identified in the County's Comprehensive County Expressway Planning Study Draft 2008 Update. It is the City's understanding that the highest priority for funding expressway capacity and operational improvements are the Tier 1A projects. The Executive Summary of the County Expressway Study is attached.

Based on the comments from the Planning Commission on traffic, the City Traffic Engineer, environmental and traffic consultants will be in available at the November 19th meeting to answer questions.

The Project Description, Trees and Landscaping section from the November 12, 2008 Planning Commission staff report should reflect the revised text as identified on Page 3 of the FEIR:

Approximately 945,949 square feet (61 percent) of the project site will be open space and pavement (i.e., all areas not occupied by buildings). Of the 945,949 square feet of open space, approximately ~~434,206~~ 430,769 square feet (28 percent) will be landscaping and the remaining ~~511,743~~ 515,104 square feet (33 percent) will be walkways ~~and other hardscape (not including parking lots, access roads, or and~~ driveways).

There are no other text changes other than that noted above to the November 12th staff report. The Attachments to the November 12, 2008 staff report will reflect the addition of the Planning Commission Resolutions for the FEIR (include the Statement of Overriding Considerations), General Plan Amendment, Rezoning and Development Agreement; and The Executive Summary of the Comprehensive County Expressway Planning Study Draft 2008 Update dated October 9, 2008.

RECOMMENDATION

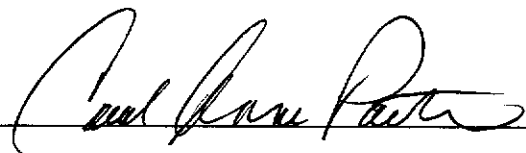
Based on the evidence and findings in the November 12, 2008 and this supplemental Staff Report for PLN2008-07176 (General Plan Amendment); PLN2008-07177 (Rezone ML to PD); PLN2008-07179 (Development Agreement); CEQ2008-01062 (EIR/ SCH#20080520111), located at 2600, 2800 San Tomas Expressway, and 2400 Condensa Street, it is recommended that the Planning Commission adopt the four attached resolutions that recommend that the Council:

1. Certify the EIR and find it in conformance with CEQA;
2. Approve the General Plan Amendment #71 to change the designation from Light Industrial to Office/Research and Development;
3. Approve the Rezone from ML-Light Industrial to PD-Planned Development in conformance with the Development Plan, and subject to Conditions of Approval; and,
4. Approve and Pass-to-Print an Ordinance for a Development Agreement

ATTACHMENTS TO STAFF REPORT (Note attachments "b" through "g" are attached to the 11/12/2008 Staff Report)

- a. Planning Commission Resolutions (without attached Exhibits)
- h. Executive Summary of the Comprehensive County Expressway Planning Study Draft 2008 Update dated October 9, 2008
- i. Qualitative Analysis of Effects from Improvements on San Tomas Expressway

Report Approved By:



Date:

11-14-08

I:\PLANNING\2008\Project Files Active\PLN2008-07176 thru 07180 2600 & 2800 San Tomas Expwy & 2400 Condensa St\Harvest PC Staff Report\Harvest PC Nov 19 Staff RPT 11142008.doc

ATTACHMENT A

PLANNING COMMISSION RESOLUTIONS

**ALL EXHIBITS REFERENCED IN THESE PLANNING COMMISSION
RESOLUTIONS ARE FOUND IN THE DECEMBER 2, 2008 CITY
COUNCIL AGENDA REPORT.**

RESOLUTION NO. _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, APPROVING THE FINAL ENVIRONMENTAL IMPACT REPORT ("FEIR") AND RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF SANTA CLARA THAT IT CERTIFY THE FINAL ENVIRONMENTAL IMPACT REPORT, MAKE FINDINGS WITH RESPECT THERETO, ADOPT THE MITIGATION MONITORING AND REPORTING PROGRAM AND APPROVE A STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE PROJECT LOCATED AT 2600, 2800 SAN TOMAS EXPRESSWAY AND 2400 CONDENSEA STREET, SANTA CLARA, CALIFORNIA

SCH# 20080520111
CEQ2008-01062 (Final EIR)
PLN2008-07176 (General Plan Amendment)
PLN2008-07177 (Rezone ML to PD)
PLN2008-07179 (Development Agreement)
PLN2008-07178 (Lot Line Adjustment)
PLN2008-07180 (Architectural Review)

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, AS FOLLOWS:

WHEREAS, Harvest Properties, Inc. ("Harvest") made an application for the development of a site consisting of 35.63 acres located at 2600, 2800 San Tomas Expressway and 2400 Condensa Street ("Project Site"); and

WHEREAS, an application has been made to amend the 1992 City of Santa Clara General Plan designation for the Project Site from Light Industrial to Office/Research and Development; and

WHEREAS, an application has been made to rezone the Project Site from Light Industrial (ML) to Planned Development (PD) to allow for the creation of a corporate campus consisting of up to 1,950,000 square feet of office and high-tech lab buildings, which are up to eight (8) stories and 140 feet in height, as measured from grade to roof

line, and to construct a maximum parking ratio of 3.63/1000 square feet averaged over the Project Site ("Project") as shown on the development plan, attached as Exhibit A ("Development Plan"); and

WHEREAS, Harvest is proposing a development agreement to preserve the size and density of development as set forth in the PD and the City is willing to enter a development agreement for the reasons enumerated in the City Code of Santa Clara, California ("Code") Section 17.10.010; and

WHEREAS, the Project entitlements will include Certification of the FEIR, a General Plan Amendment from Light Industrial to Office/Research and Development, a rezoning of the Project Site from Light Industrial to a PD zone, adoption of a Development Agreement Ordinance, A Lot Line Adjustment and Architectural Review, (collectively, "Entitlements"); and

WHEREAS, on April 29, 2008, the City of Santa Clara ("City") circulated a Notice of Preparation of a draft Environmental Impact Report ("DEIR") to review and analyze the environmental impacts of the Project; and

WHEREAS, the City distributed copies of the DEIR to the public agencies which have jurisdiction by law with respect to the Project and to other interested persons and agencies and sought the comments of such persons and agencies for forty-five (45) days, beginning on August 26, 2008 ("Comment Period"); and

WHEREAS, the City prepared written responses to the comments received during the Comment Period and included these responses in a separate volume entitled Final Environmental Impact Report for the Project FEIR (SCH#20080520111). The FEIR consists of: a list of agencies and organizations to whom the DEIR was sent, a list of the

comment letters received on the DEIR, revisions to the text of the DEIR, responses to comments received on the DEIR, and copies of comment letters. The FEIR was subsequently circulated for a 10-day review period, in accordance with CEQA, on November 7, 2008; and

WHEREAS, the Planning Commission has reviewed the FEIR prepared for the Project, City Staff reports pertaining to the FEIR and all evidence received at a duly noticed public hearing on November 12, 2008 and November 19, 2008. All of these documents and evidence are herein incorporated by reference into this Resolution; and

WHEREAS, the FEIR identified certain significant and potentially significant adverse effects on the environment caused by the Project and thus it is the recommendation of the Planning Commission that the City Council require that the mitigation measures contained in the FEIR be implemented for the development of the Project; and

WHEREAS, the City is required whenever possible, pursuant to CEQA, to adopt all feasible mitigation measures or feasible project alternatives that can substantially lessen or avoid any significant environmental effects of the Project.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, AS FOLLOWS:

1. That the Planning Commission hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. That the Planning Commission hereby finds that the FEIR has been completed in compliance with CEQA.
3. That the Planning Commission hereby finds the FEIR has been presented to the Planning Commission, which reviewed and considered the information and analysis

contained therein before recommending that the City Council certify the FEIR and make the required findings, under the California Environmental Quality Act, set forth herein.

4. That the Planning Commission recommends that the City Council find, pursuant to Public Resources Code Section 21081 and California Code of Regulations, Title 14, Section 15091, that many of the proposed mitigation measures described in the FEIR are feasible, and therefore will become binding upon the City and affected landowners and their assigns or successors in interest when the Project is approved.

5. That, in order to comply with Public Resources Code Section 21080.6, the Planning Commission hereby recommends that the City Council adopts the mitigation monitoring and reporting program as set forth in the attached Exhibit B, ("MMRP"). The program is designed to ensure that, during project implementation, the City, affected landowners, their assigns and successors in interest and any other responsible parties comply with the feasible mitigation measures identified. The mitigation and monitoring program identifies, for each mitigation measure, the party responsible for implementation.

6. That the FEIR sets forth environmental impacts that would be significant or potentially significant in the absence of mitigation measures. As to each such impact, the Planning Commission hereby recommends that the City Council finds that changes or alterations incorporated into the project, by the applicant or by the conditions of approval, mitigate or avoid the significant or potentially significant environmental impacts.

7. That, as to the specific traffic impacts set forth in the FEIR which would be significant or potentially significant in the absence of mitigation measures, the Planning

Commission hereby recommends that the City Council find that a fair share traffic payment to contribute to construction of improvements under the control of another jurisdiction will mitigate or avoid the significant or potentially significant environmental traffic impacts for the Project. These fair share contributions are shown in Exhibit C ("Fair Share Mitigations"), hereto. While the improvements are likely to be constructed, these improvements are located outside the jurisdiction of the City and thus the implementation of these traffic mitigations is not assured; therefore the traffic impacts could become significant and unavoidable because the construction of the improvements could become infeasible.

8. That the FEIR, as stated below, set forth Project and Cumulative Impacts which are significant and unavoidable and which cannot be mitigated or avoided through the adoption of feasible mitigation measures or feasible alternatives. As to these impacts, the Planning Commission hereby recommends pursuant to Public Resources Code Section 21081 and CEQA Guidelines Sections 15091 et seq, that the City Council finds them infeasible and approves the following Statement of Overriding Considerations which justify the occurrence of those impacts.

a. Significant Unavoidable Impacts. The Project will cause significant, unavoidable impacts including impacts to (i) land use, as it will result in a net increase in the industrial/office space within the City and increase the existing jobs/housing imbalance, and (ii) transportation, as the Project would result in significant level of service (LOS) impacts for one intersection and the identified freeway segment impacts. As stated in the FEIR, the Project will cumulatively contribute to significant, unavoidable impacts which include land use, transportation, air quality and global climate change.

These aforementioned Project and cumulative significant unavoidable impacts cannot be avoided or substantially reduced by feasible changes or alterations to the Project because other than the changes or alterations already adopted, there are specific economic, legal, social and technological benefits of the Project, as set forth below, which outweigh the unavoidable environmental affects.

b. Statement of Overriding Considerations. Despite the significant unavoidable impacts listed above, the Planning Commission recommends that the Council find that the Project benefits outweigh the unavoidable significant impacts. These overriding considerations are:

(i) The Project proposes to redevelop the underutilized Project Site into a more efficient, viable campus environment for corporate use which can take advantage of transit opportunities by concentrating jobs near existing transit facilities; and

(ii) The Project will retain and promote quality job growth within the City of Santa Clara and the geographically constrained region; and

(iii) The Project will provide financial assistance to enhance and support construction and maintenance of the San Tomas Aquino Creek Trail system; and

(iv) The PD Permit and the Entitlements associated with the Project set forth the specific future development parameters in order to achieve consistency throughout the phased Project; and

(v) The Project will provide positive economic benefit to the City as the Corporate users employees and visitors will be a primary source of potential business.

(vi) The Project will contribute the City's Housing Fund to assist with the creation of housing and the subsidizing of low-income housing, where required.

(vii) The Project will incorporate "Green Building" designs and aim to be LEED Certified to offset air quality and global climate change impacts as well as to serve as an example for future projects in the City.

9. That the Planning Commission hereby recommends that the City Council finds that the proposed reduced density alternative set forth in the FEIR cannot feasibly, substantially lessen or avoid those significant adverse environmental effects not otherwise lessened or avoided by the adoption of all feasible mitigation measures set forth in the FEIR and that it further would not meet the project objectives set forth in the FEIR.

10. That the Planning Commission recommends that the City Council finds that the Project is consistent with the City of Santa Clara General Plan, as it will be amended from Light Industrial to Office/Research and Development, and is the best way to implement the goals and policies of the General Plan.

11. Based on the findings set forth in this Resolution and the evidence in the City Staff Report, the Planning Commission hereby recommends that the City Council certify the FEIR, make findings concerning mitigation measures, adopts a mitigation monitoring program, make findings concerning alternatives and make findings that there exist certain overriding economic, social and other considerations for approving the Project that justify the occurrence of those Project impacts, all in accordance with CEQA for the Project.

12. If any section, subsection, sentence, clause, phrase, or word of this Resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The Planning Commission hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF THE RESOLUTION PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE ____ DAY OF _____, BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ABSTAINED: COMMISSIONERS:

ATTEST:

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments Incorporated by Reference:

1. Exhibit A: Development Plan.
2. Exhibit B: Mitigation Monitoring and Reporting Program
3. Exhibit C: Fair Share Mitigations

RESOLUTION NO. _____

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF SANTA CLARA, CALIFORNIA,
RECOMMENDING APPROVAL OF THE GENERAL PLAN
AMENDMENT OF THE PROPERTY LOCATED AT 2600,
2800 SAN TOMAS EXPRESSWAY AND 2400 CONDENSE
STREET, SANTA CLARA, CALIFORNIA**

SCH# 20080520111
CEQ2008-01062 (Final EIR)
PLN2008-07176 (General Plan Amendment)
PLN2008-07177 (Rezone ML to PD)
PLN2008-07179 (Development Agreement)
PLN2008-07178 (Lot Line Adjustment)
PLN2008-07180 (Architectural Review)

**BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA
CLARA, CALIFORNIA, AS FOLLOWS:**

WHEREAS, Harvest Properties, Inc. ("Harvest") made an application for a General Plan Amendment in connection with development of a site consisting of 35.63 acres located at 2600, 2800 San Tomas Expressway and 2400 Condensa Street ("Project Site") in order to change the General Plan Land Use Designation to increase the limited building height permitted in Light Industrial (70 feet) to Office/Research and Development (70 feet unless special designs or mixed uses are proposed and a rezoning to Planned Development is obtained); and

WHEREAS, Harvest has made an application to rezone the Project Site to a Planned Development (PD) Zone to support the creation of a corporate campus consisting of 1,950,000 square feet of office and high-tech lab buildings, which are up to eight (8) stories and 140 feet in height, as measured from grade to roof line, and to construct a

maximum parking ratio OF 3.63/1000 square feet averaged over the Project Site ("Project"); and

WHEREAS, the Government Code requires that a General Plan amendment be made only "in the public good"; and

WHEREAS, the Government Code further requires that the Planning Commission provide input to the City Council on any proposed General Plan amendment; and

WHEREAS, notice of the public hearing on the General Plan Amendment was published in the *San Jose Mercury News*, a newspaper of general circulation, on November 1, 2008; and

WHEREAS, notices of the public hearing on the General Plan Amendment were mailed to all property owners within 1000-foot radius of the property, according to the most recent assessor's roll; and

WHEREAS, before considering the General Plan Amendment for the Project Site, the Planning Commission reviewed and considered the information contained in the FEIR for the Project (SCH #2008052011); and

WHEREAS, the Planning Commission approved the FEIR and recommended that the City Council certify the FEIR and find that the mitigation measures identified in the FEIR should be incorporated into the FEIR and imposed on the Project, sufficient to mitigate or avoid the significant environmental effects and that there are specific economic, social and other considerations which make infeasible the project alternatives that would avoid or mitigate the environmental impacts; and

WHEREAS, the Project entitlements will include Certification of the FEIR ("FEIR Resolution"), a General Plan Amendment from Light Industrial to Office/Research and

Development ("General Plan Amendment"), a rezoning of the Project Site from Light Industrial(ML) to a PD zone, adoption of a Development Agreement Ordinance, a Lot Line Adjustment and Architectural Review, (collectively, "Entitlements"); and

WHEREAS, the Planning Commission has reviewed the General Plan Amendment and conducted a public hearing.

NOW, THEREFORE, BE IT FURTHER RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA THAT IT RECOMMENDS CITY COUNCIL APPROVAL OF THE GENERAL PLAN AMENDMENT AS FOLLOWS:

1. General Plan Amendment Findings. That the Planning Commission finds and determines that the General Plan Amendment is in the interest of the public good because the General Plan Amendment will change the General Plan Land Use Designation to allow for increased height, but will require special designs, including a corporate campus, as proposed in the PD.
2. That the Planning Commission hereby recommends that the City Council amend the General Plan by changing the General Plan Land Use Designation for the Project Site to increase the limited building height from Light Industrial (70 feet) to Office/Research and Development (70 feet unless special designs or mixed uses are proposed and a rezoning to Planned Development is obtained).
3. That, based on the findings set forth in this Resolution, the FEIR Resolution and the evidence in the City Staff Report and such other evidence as received at the public hearing on this matter the Planning Commission hereby recommends that the City Council approves the General Plan Amendment.

4. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The Planning Commission of the City of Santa Clara hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE PLANNING COMMISSISON OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 19TH DAY OF NOVEMBER, 2008, BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ABSTAINED: COMMISSIONERS:

ATTEST:

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

RESOLUTION NO. _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE TO APPROVE A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SANTA CLARA AND HARVEST PROPERTIES, INC. FOR THE PROPERTY LOCATED AT 2600, 2800 SAN TOMAS EXPRESSWAY AND 2400 CONDENSEA STREET, SANTA CLARA, CALIFORNIA

SCH# 20080520111
CEQ2008-01062 (Final EIR)
PLN2008-07176 (General Plan Amendment)
PLN2008-07177 (Rezone ML to PD)
PLN2008-07179 (Development Agreement)
PLN2008-07178 (Lot Line Adjustment)
PLN2008-07180 (Architectural Review)

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, AS FOLLOWS:

WHEREAS, California Government Code Sections 65864 through 65869.51 ("Development Agreement Act") authorize cities to enter into binding development agreements with owners of real property and these agreements govern the development of the property; and

WHEREAS, Harvest Properties, Inc. ("Harvest") has requested that the City of Santa Clara ("City") enter into the type of agreement contemplated by the Development Agreement Act; and

WHEREAS, City staff have negotiated and recommended for approval a Development Agreement subject to specific conditions of approval, all attached as Exhibit A ("Development Agreement"), with Harvest in connection with the proposed campus

development located at 2600, 2800 San Tomas Expressway and 2400 Condensa Street ("Project"); and

WHEREAS, the Project entitlements will include Certification of the FEIR ("FEIR Resolution"), a General Plan Amendment from Light Industrial to Office/Research and Development ("General Plan Amendment"), a rezoning of the Project Site from Light Industrial(ML) to a PD zone, adoption of a Development Agreement Ordinance, a Lot Line Adjustment and Architectural Review, (collectively, "Entitlements");

WHEREAS, the Planning Commission has reviewed the Development Agreement, conducted a public hearing and has considered all available facts related to the Development Agreement; and

WHEREAS, before considering the Development Agreement, the Planning Commission reviewed and considered the information contained in the FEIR (SCH# 2008052011); and

WHEREAS, the Planning Commission recommended that the City Council finds that the mitigation measures identified in the FEIR be incorporated into the FEIR and imposed on the Project, sufficient to mitigate or avoid the significant environmental effects; and

WHEREAS, the Planning Commission recommended that the City Council find that, despite the occurrence of significant environmental effects that cannot be substantially lessened or avoided through the adoption of feasible mitigation measures or feasible alternatives, there exist certain overriding economic, social or other considerations for approving the Project the City believes justify the occurrence of those impacts; and

WHEREAS, the Development Agreement complies with all requirements of Government Code Section 65865.2.

NOW THEREFORE, BE IT FURTHER RESOLVED AND RECOMMENDED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, THAT THE CITY COUNCIL OF THE CITY OF SANTA CLARA ADOPT AN ORDINANCE TO APPROVE A DEVELOPMENT AGREEMENT AS FOLLOWS:

SECTION 1: The Ordinance.

1. The City Council hereby finds and determines that the foregoing recitals are true and correct.
2. The City Council hereby finds and determines that the provisions of the Development Agreement are consistent with the General Plan of the City, as may be amended.
3. The City Council hereby finds and determines that the Development Agreement complies with all requirements of Government Code Section 65865.2.
4. The Development Agreement is hereby approved in substantially the form presented to the City Council, a copy of which is on file with the City Clerk and can be reviewed by members of the public at the City Clerk's Office, 1500 Warburton Avenue, Santa Clara, California.
5. The City Manager, or designee, is hereby authorized to execute the Development Agreement on behalf of the City, upon adoption of this ordinance, together with such non-substantive changes and amendments as may be approved by the City Manager and City Attorney. The City Manager, or designee, is authorized to take

any action and execute any and all documents and agreements necessary to implement the Development Agreement.

6. Within ten (10) days after the City Manager, or designee, executes the Development Agreement, the City Clerk shall cause the Development Agreement to be recorded with the Santa Clara County Clerk-Recorder's Office.

SECTION 2: Constitutionality, severability.

If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

SECTION 3: Effective Date.

This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirement of Sections 808 and 812 of the Charter of the City of Santa Clara, California.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF THE RESOLUTION PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE ____ DAY OF _____, BY THE FOLLOWING VOTE:

AYES:	COMMISSIONERS:
NOES:	COMMISSIONERS:
ABSENT:	COMMISSIONERS:
ABSTAINED:	COMMISSIONERS:

ATTEST: _____
ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments Incorporated by Reference:
1. Exhibit A: Development Agreement

RESOLUTION NO. _____

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF SANTA CLARA, CALIFORNIA,
RECOMMENDING THE REZONING OF THE PROPERTY
LOCATED AT 2600, 2800 SAN TOMAS EXPRESSWAY
AND 2400 CONDENSEA STREET, SANTA CLARA,
CALIFORNIA**

SCH# 20080520111
CEQ2008-01062 (Final EIR)
PLN2008-07176 (General Plan Amendment)
PLN2008-07177 (Rezone ML to PD)
PLN2008-07179 (Development Agreement)
PLN2008-07178 (Lot Line Adjustment)
PLN2008-07180 (Architectural Review)

**BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA
CLARA, CALIFORNIA, AS FOLLOWS:**

WHEREAS, Harvest Properties, Inc. ("Harvest") made an application for the development of a site consisting of 35.63 acres located at 2600, 2800 San Tomas Expressway and 2400 Condensa Street ("Project Site"); and

WHEREAS, an application has been made to amend the 1992 City of Santa Clara General Plan designation for the Project Site from Light Industrial to Office/Research and Development; and

WHEREAS, the Project Site is currently zoned as Light Industrial (ML); and

WHEREAS, in order to effectuate the development application, the Project Site needs to be rezoned to a Planned Development (PD) Zone to support the creation of a corporate campus consisting of 1,950,000 square feet of office and high-tech lab buildings, which are up to eight (8) stories and 140 feet in height, as measured from grade to roof line, and to construct a maximum parking ratio of 3.63/1000 square feet

averaged over the Project Site ("Project") as shown on the development plan, attached as Exhibit A ("Development Plan"); and

WHEREAS, Harvest is proposing a development agreement to preserve the size and density of development as set forth in the PD and the City is willing to enter a development agreement for the reasons enumerated in the City Code of Santa Clara, California ("Code") Section 17.10.010; and

WHEREAS, before considering the rezoning of the Project Site, the Planning Commission reviewed and considered the information contained in the FEIR for the Project (SCH #2008052011); and

WHEREAS, the Planning Commission approved of the FEIR and recommended that the City Council certify the FEIR and find that the mitigation measures identified in the FEIR should be incorporated into the FEIR and imposed on the Project, sufficient to mitigate or avoid the significant environmental effects and that there are specific economic, social and other considerations which make infeasible the project alternatives that would avoid or mitigate the environmental impacts; and

WHEREAS, the Project entitlements will include Certification of the FEIR ("FEIR Resolution"), a General Plan Amendment from Light Industrial to Office/Research and Development ("General Plan Amendment"), a rezoning of the Project Site from Light Industrial (ML) to a PD zone, adoption of a Development Agreement Ordinance, a Lot Line Adjustment and Architectural Review, (collectively, "Entitlements"); and

WHEREAS, Code Section 18.112.040 provides for the review and recommendation of the City's Planning Commission of all rezoning requests before action is to be taken by the City Council.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, AS FOLLOWS:

1. That the Planning Commission hereby recommend that the City Council rezone the Project Site, consisting of approximately 35.63 acres, shown on Exhibit A, attached hereto and incorporated by this reference, from Light Industrial (ML) to Planned Development (PD), to be used as a corporate campus.
2. Pursuant to Code Section 18.12.110, the Planning Commission finds and determines that the public necessity or convenience of the general welfare require the rezoning set forth above in order to conserve property values, protect or improve the existing character and stability of the area in question, promote the orderly and beneficial development of such area, and allow imaginative planning and design concepts to be utilized which would otherwise be restricted in other zoning districts.
3. That, based on the findings set forth in this Resolution, the FEIR Resolution and the evidence in the City Staff Report, the Planning Commission hereby recommends that the City Council rezones the Project Site as set forth herein.
4. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The Planning Commission of the City of Santa Clara hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF THE
RESOLUTION PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE
CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF
HELD ON THE ____ DAY OF _____, BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ABSTAINED: COMMISSIONERS:

ATTEST:

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachment Incorporated by Reference:
Exhibit A: Development Plan

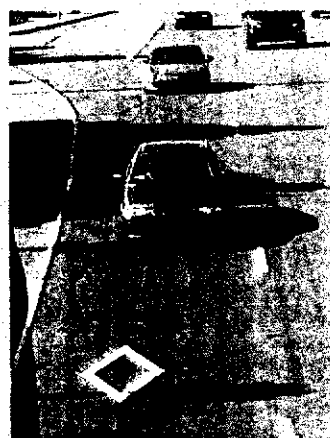
ATTACHMENT H

COUNTY EXPRESSWAY STUDY

**Executive Summary of the Comprehensive County Expressway Planning Study Draft
2008 Update dated October 9, 2008**

Comprehensive County Expressway Planning Study

DRAFT 2008 UPDATE



COUNTY OF SANTA CLARA
ROADS AND AIRPORTS DEPARTMENT

OCTOBER 9, 2008

County of Santa Clara Board of Supervisors

Donald F. Gage
District 1

Blanca Alvarado
District 2

Pete McHugh – Chairperson
District 3

Ken Yeager
District 4

Liz Kniss
District 5

Peter Kutras, Jr.
County Executive

Policy Advisory Board

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Board of Supervisors
County of Santa Clara

Jamie McLeod – PAB Vice-Chair
Council Member
City of Santa Clara

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Board of Supervisors
County of Santa Clara

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Council Member
City of Campbell

Joe Hernandez, PAB Alternate
Vice Mayor
City of Campbell

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City of Cupertino

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David Casas
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Council Member
City of Palo Alto

Kansen Chu
Council Member
City of San Jose

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Council Member
City of Santa Clara

Ann Waltonsmith
Mayor
City of Saratoga

Aileen Kao, PAB Alternate
Council Member
City of Saratoga

Christopher R. Moylan
Council Member
City of Sunnyvale

Melinda Hamilton, PAB Alternate
Vice Mayor
City of Sunnyvale

Dominic J. Caserta
City of Santa Clara Council Member
VTA Board Member

Nancy Pyle
City of San Jose Council Member
VTA Board Member

Ted Brown – ex-officio
Chairperson
County Roads Commission

Steven Levin – ex-officio
Member
County Roads Commission

EXECUTIVE SUMMARY

Adopted in 2003, the Comprehensive County Expressway Planning Study provides a long-term plan for the improvement and maintenance of the County Expressway System. It includes all areas of need: capacity and operational improvements, signal operations, high-occupancy vehicle (HOV) lanes, bicycle and pedestrian improvements, and finishing elements such as landscaping and sound walls. It also includes a summary of ongoing operating and maintenance needs and funding strategy recommendations.

The 2008 Update is the first update of the 2003 Expressway Study. While it is primarily an administrative update to reflect new conditions, it also tackled some key issues unresolved in the 2003 Study. These issues included developing an expenditure plan for the highest priority expressway capacity and operational improvements, integrating South County's Santa Teresa-Hale Corridor's needs into the project lists, and developing a plan to more completely accommodate pedestrians on all expressways.

The same collaborative planning process used to develop the 2003 Expressway Study was used for the 2008 Update. Elected officials and staff from twelve cities and the Santa Clara Valley Transportation Authority (VTA), representatives from the County Roads Commission, and the County Bicycle and Pedestrian Advisory Committee (BPAC) participated in the development of the Update. Public comments will be solicited during the circulation of the Draft Update document.

Accomplishments Since 2003

The benefits of having the 2003 Expressway Study have been substantial and systemwide. The Study has brought a greater understanding of the value provided by the expressway system as part of the transportation system in Santa Clara County. It has also increased awareness of what is needed to keep the expressway system functioning well, thereby, helping the County take advantage of every possible opportunity. The highest priority expressway capacity and operational improvements (Tier 1A) became the Expressway Program in the VTA Valley Transportation Plan 2030 (VTP 2030), laying the groundwork for grant allocations and federal earmarks. In addition, the comprehensive list of expressway needs has been a resource for cities in conditioning developers to provide improvements.

Specific project delivery accomplishments include:

- ❖ **Capacity and Operational Improvements** – Twelve of the 28 highest priority expressway capacity and operational improvements (Tier 1A at-grade projects) have been completed or funded by various grants, County funding sources, and city contributions through developer mitigations. In addition, six of the seven next highest set of priority projects (Tier 1B grade separation projects) have full or partial funding commitments from city development impact fees.
- ❖ **Bicycle Improvements** – Nine of the eleven projects listed in the 2003 Study have been delivered or funded. These improvements involved widening shoulders at pinch points and improving delineation of shoulder areas for bicycle use.
- ❖ **Pedestrian Improvements** – Some progress has also been made in providing pedestrian improvements as identified in the 2003 Pedestrian Element including constructing new sidewalk segments along five of the expressways, providing crossing enhancements at several high demand locations, and installing pedestrian countdown timers at 39 intersections.

Little or no progress has been made in providing new and higher replacement sound walls or installing new landscaping due to a lack of funding sources. In addition, no progress has been made to increase levels of effort for expressway operations and maintenance. Rather, the annual operations and maintenance shortfalls were exacerbated by the declining value of the gas tax and the year-by-year uncertainty whether the State would borrow roadway maintenance funds, making it a challenge to sustain current levels of effort.

Capacity and Operational Improvement Element

As in the 2003 Study, the 2008 Update capacity and operational improvements include the following types of projects:

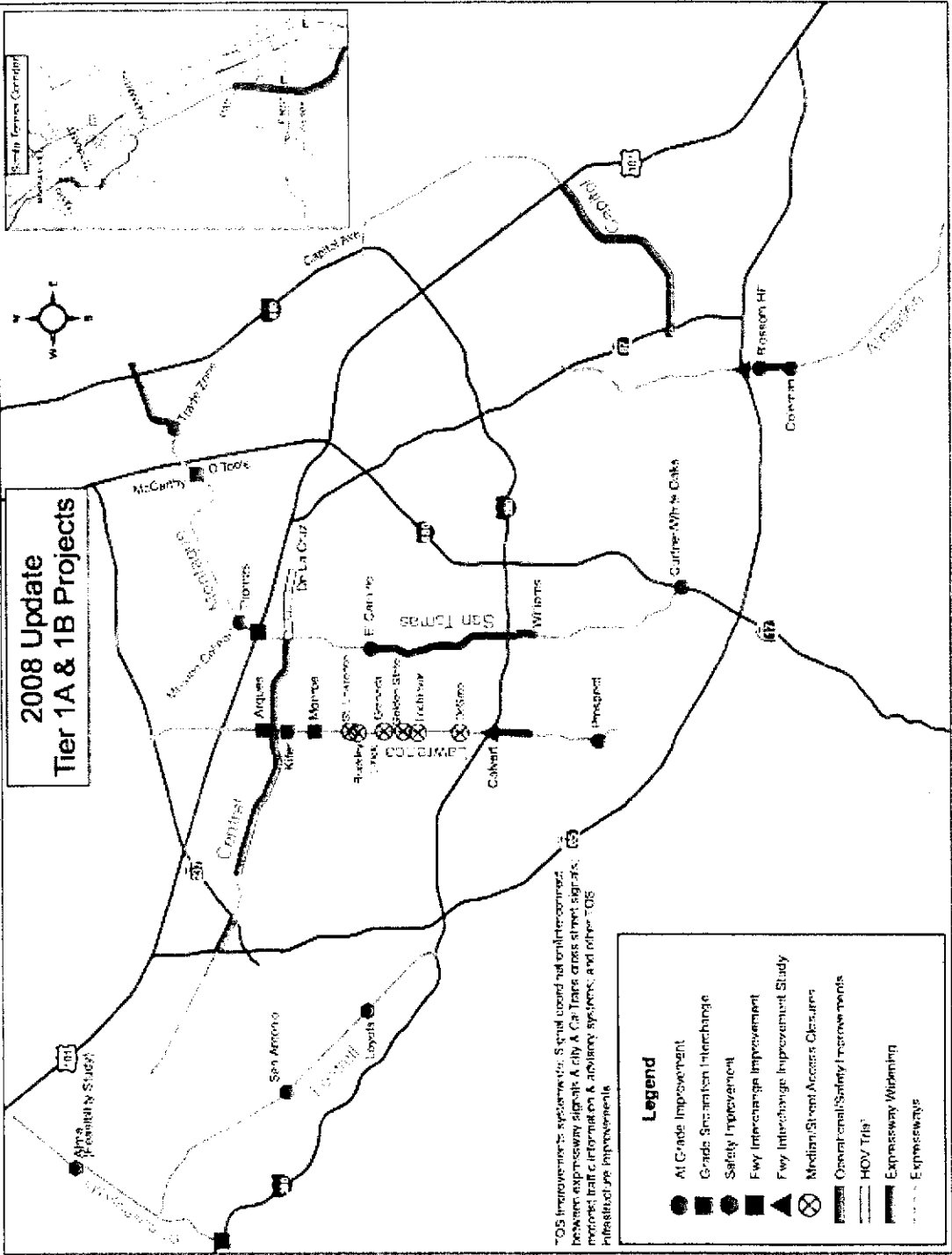
- ❖ Capacity Projects – Roadway widening, new turning lanes at intersections, and new or reconfigured interchanges/grade separations.
- ❖ Operational and Safety Improvements – Auxiliary lanes, median/access closures, and bridge replacements.
- ❖ Signal Operational Improvements – Traffic Operations System (TOS) equipment using advanced technologies to monitor and improve traffic flow, replacement of outdated equipment, and expanded coordination with city signal systems.
- ❖ High Occupancy Vehicle (HOV) System Projects – Recommendations to improve the effectiveness of the HOV system, including corrective actions dealing with high violation rates and removing a little-used peak-hour queue jump lane on Central Expressway.

The total roadway capital program includes 74 projects at an estimated cost of \$2.2 to 2.6 billion. To determine priorities for funding and implementation, the projects were divided into tiers using slightly modified criteria from the 2003 Study. Table ES-1 provides a summary of the tiers and Figure ES-1 maps the highest priority projects (Tier 1A and 1B).

Table ES-1: Roadway Projects Tier Summary

Tier	Tier Criteria	# of Projects	Cost (2008 \$/millions)
1A	Improves 2001 and 2006/07 LOS F intersections, provides operational improvements, or conducts feasibility studies	25	\$166
1B	Constructs interchanges at 2001 LOS F intersections	5	\$253
1C	Improves 2025 projected LOS F intersections	20	\$76
2	Provides other expressway capacity improvements or new technologies	15	\$875-930
3	Reconstructs major existing facilities or constructs new facilities	9	\$861-1,126
Totals		74	\$2,231-2,551

Figure ES-1: 2008 Tier 1A and 1B Projects



Bicycle Element

Bicycles are accommodated on all expressways and along the Santa Teresa-Hale Corridor. The 2003 Bicycle Element focused on bringing all expressways into compliance with the Expressway Bicycle Accommodation Guidelines. No changes in policy or approach are made in the 2008 Bicycle Element. A total of six projects are shown in the Bicycle Element. Included are projects from the 2003 Bicycle Element that have not been completed, a systemwide bicycle signal detection improvement project, and an improvement for the Santa Teresa-Hale Corridor.

Pedestrian Element

In line with the County's belief that the safest way to accommodate pedestrian use of expressways is on improved sidewalks behind the curb or on parallel routes off the expressway, the 2008 Update has taken a far more proactive pedestrian route planning approach than the 2003 Study. The goal of the 2008 Update was to identify continuous routes, either in the right-of-way or along alternate parallel routes, providing for pedestrian travel along both sides of the expressways wherever possible. The 2008 Update Pedestrian Element completely replaces the 2003 Expressway Study Pedestrian Element, including all policies, project lists, and recommendations.

The net results of this proactive approach for pedestrian route planning are recommendations for 38 miles of new sidewalks, a comprehensive signage program to help guide pedestrians along parallel routes, and a recommendation that all expressway intersections should include design considerations for pedestrian crossing enhancements whenever opportunities arise for these improvements.

Finishing Element

The Finishing Program Element involves improvements to expressway medians and edges. These improvements include sound wall, landscaping, and street lighting. The 2008 Update carries forward the 2003 Study recommendations for 63,500 feet of new sound walls and replacing 36,000 feet of existing walls with higher sound walls. In addition, the basic level of landscaping recommended continues to be trees and limited shrubs, median finishes (such as decomposed granite), sound walls covered with ivy, and automated irrigation systems. Due to a lack of adequate annual funding for landscape maintenance, the Update also continues to support the County's policy to only allow installation of new landscaping if full recovery of capital and maintenance costs can occur.

New to the Finishing Element for the 2008 Update is the consideration of pedestrian scale lighting to support the ambitious pedestrian access plans. Because the utility and maintenance costs of street lighting are high and beyond the means of the expressway system's operating budget, the Update includes a policy similar to the landscaping policy, where installation of pedestrian scale street lighting along the expressways is only allowed if full recovery of capital and maintenance costs can occur.

Annual Operations and Maintenance Costs

Operations and maintenance (O&M) include all activities and material necessary to keep the expressways functioning safely and effectively while looking presentable. It includes signal operations, sweeping, pavement maintenance, landscape maintenance, enforcement, and aging infrastructure replacement. As part of the 2003 Study, target levels of effort were developed. The 2003 Study also indicated that the annual costs for these target levels of effort exceeded existing available revenues.

Since the 2003 Study, the annual O&M costs for the target levels of effort have grown 51% (from \$18 million to \$27.2 million) due to increased labor and material costs as well as an expanded Traffic Operations System that must be maintained. With an annual cost estimate of \$27.2 million in 2008 dollars and only \$10.8 million expected to be available for expressway O&M in 2009, there will be an annual shortfall of \$16.4 million to achieve the target levels of effort. This shortfall is expected to grow as real gas tax revenue declines.

Funding Strategy

With approximately \$2.5 billion in capital needs (see Table ES-2) and an annual \$16.4 million shortfall for operations and maintenance, some innovative and aggressive strategies are needed. In reviewing all known and potential capital funding sources, the net result through 2035 is likely to be:

- ❖ All Tier 1A projects and half of the Tier 1B projects will be funded over the next 25 years. In addition, most of the bicycle needs and some of the pedestrian needs will be funded.
- ❖ The following needs will not be funded: the remainder of the Tier 1B projects; the roadway projects in Tiers 1C, 2, and 3; most of the pedestrian needs; and the sound walls and landscaping needs listed in the Finishing Program.

Table ES-2: Capital Program Funding Needs ¹

Element	Total Cost	Committed Funds ²	Potential Funding ³	Net Needs
Capacity & Operational Improvements	\$2,244-2,564	\$106.3		\$2,138-2,458
Bicycle	16.5		10.9	5.6
Pedestrian	76.3-84.3		23.3	53-61
Finishing: Sound Walls	76.6		13.7	62.9
Finishing: Landscaping	24-29			24-29
Total				\$2,284-2,617 million

¹ All costs are in millions of 2008 dollars.

² Committed sources include grants (Federal earmarks, VTA Bicycle Expenditure Program, other sources) and city commitments, including development impact fees.

³ Other potential funding sources include funded, Tier 1A, and Tier 1B roadway projects (project costs include appropriate bicycle, pedestrian, and sound wall needs) and land development conditions.

⁴ Includes San Tomas Expressway Culvert project.

It will be a challenge to maintain the current O&M levels of effort, and it will not be possible to expand the levels of effort to reach any of the targets without an increase in sustainable revenue sources. O&M efforts necessary to maintain the safety of the expressway system will continue to be the highest priority for the limited funding. However, the forecast is that pavement conditions will decline, the County will be less responsive to signal timing requests, there will be less sweeping and more weeds/litter, and most other non-critical maintenance will be deferred.

The County will continue to take the following actions: pursue all possible grants and partnerships for expressway improvement and O&M needs; work with the cities to acquire traffic mitigation fees and new development conditions to support the expressway system; and, support all state efforts to index the gas tax to inflation and to increase the gas tax to help fund the O&M needs of the expressway system. However, these actions are not likely to be enough to deliver all the high priority capital needs or increase O&M levels of effort.

Acquiring new revenue sources for both capital and O&M needs is very difficult in the current economic environment. However, some opportunities do exist and the following strategies are recommended to meet the needs identified in the 2008 Update:

- ❖ Request full funding for the Tier 1A Capacity and Operational Improvements in VTP 2035 with Tier 1B projects also listed should additional funding become available.
- ❖ Seek \$52 million from the 2010 STIP for the first set of Tier 1A projects with follow up requests of \$25 million and \$12 million from the 2012 and 2014 STIPs, respectively, to fund a little over half of the Tier 1A projects by 2015.
- ❖ Seek funding from VTP 2030's Pavement Maintenance Program to cover the next round of expressway pavement maintenance needs to come due between 2010 and 2012 at a cost of approximately \$12-15 million annually.
- ❖ Advocate for a commitment from future High Occupancy Toll (HOT) lane revenue to help improve and maintain sections of expressways and Santa Teresa-Hale if determined to be within HOT lane corridors.
- ❖ Explore, through State liaison, opportunities for opening a State maintenance revenue stream for expressways.
- ❖ Support initiatives for vehicle registration fees or vehicle miles traveled fees to help fund expressway and local road improvement and maintenance needs.
- ❖ Advocate that MTC institute a return-to-source policy for its 10-cent gas tax authority giving the cities and County local control to meet high priority O&M needs, or continue to pursue new local funding sources for expressway O&M needs, taking advantage of partnerships with other local agencies facing annual deficits in road O&M budgets and pursue a 10-cent gas tax as a local initiative.

Next Update

The County will update the Expressway Study every four years in conjunction with the regular updates of VTA's VTP plans to reflect changing traffic and financial conditions. Special tasks recommended for the 2012 Update include conducting new traffic modeling to project future conditions, evaluating the HOV performance targets, updating the sound wall needs list, and assessing where pedestrian crossing improvements are needed at expressway intersections. Similar to the 2003 Study and 2008 Update, a collaborative process involving elected officials, local agency staff, and the public will be used to develop the 2012 Update.

Technical Working Group

Matthew Jue
City of Campbell

David Stillman
City of Cupertino

Don Dey
City of Gilroy

Tom Ho
City of Los Altos

Richard Chiu
Town of Los Altos Hills

Jamie Rodriguez
City of Milpitas

Scott Creer
City of Morgan Hill

Jim Rowe
City of Morgan Hill

Sayad Fakhry
City of Mountain View

Shahla Yazdy
City of Palo Alto

Ben Tripousis
City of San Jose

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David Pitton
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City of Sunnyvale

John Sighamony
VTA

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Infrastructure Development

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Consulting Transportation Planner

Masoud Akbarzadeh
County Traffic Engineer
Traffic Engineering and Operations

Mike Griffis
Senior Civil Engineer
Highway Design

Ananth Prasad
Senior Civil Engineer
Traffic Engineering and Operations

Martin A. Little
GIS Technician
Traffic Engineering and Operations

Bernardine Caceres
Civil Engineer
Highway Design

Susan Lee Adams
Infrastructure Development

ATTACHMENT I

QUALITATIVE ANALYSIS OF EFFECTS FROM IMPROVEMENTS

Carol Anne Painter

From: Michelle Hunt [mhunt@hextrans.com]
Sent: Friday, November 14, 2008 2:16 PM
To: Carol Anne Painter
Subject: San Tomas Widening

The Comprehensive County Expressway Planning Study identified widening San Tomas Expressway to an eight-lane facility between El Camino Real and Williams Road. We have conducted additional analyses to determine the effectiveness of this improvement. Under background conditions with the current 6-lane configuration, four of the seven intersections within this segment operate at a substandard level of service (LOS F) during the AM and/or PM peak hours. With one exception, the planned widening would improve the operations at each intersection to LOS D or better. The intersection of San Tomas Expressway and Stevens Creek Boulevard would continue to operate at LOS F during the PM peak hour; however, the average delay at this intersection would be reduced by approximately 15 seconds. Overall, the average travel time savings along this roadway segment during the peak commute hours would be approximately two to three minutes per vehicle.

Michelle Hunt

Vice President and Principal Associate

Hexagon Transportation Consultants, Inc.

San Jose | Gilroy | Phoenix | Marina del Rey | Pleasanton

40 S. Market Street, Ste 600 | San Jose, California 95113 | ☎ 408.971.6100 | 📠 408.971.6102

www.hextrans.com

♻️ Please consider the environment before printing this material.

10. File: PLN2008-07176 (General Plan Amendment); PLN2008-07177 (Rezone ML to PD); PLN2008-07179 (Development Agreement); CEQ2008-01062 (EIR/ SCH#20080520111)
- Location: 2600, 2800 San Tomas Expressway, and 2400 Condensa Street, three parcels on 35.6-acre site located on both sides of San Tomas Aquino Creek channel, south of Central Expressway (APNs 224-11-065, 224-11-066, 216-2-128). Property is zoned ML (Light Industrial).
- Applicant: Harvest Properties
- Owner: Harvest 2400, LLC & Harvest-Granite San Tomas, LLC
- Request: **Certify Final Environmental Impact Report (EIR); General Plan Amendment #71** from Light Industrial to Office/Research and Development;
Rezone from ML (Light Industrial) to PD (Planned Development);
Development Agreement to vest development rights;
Refer the project for Architectural Review of San Tomas Business Park Campus Project.
- Project Description: San Tomas Business Park Campus Project – Project Application for Building A – 650,000 square feet with parking structure; Building B – 650,000 square feet with parking structure; Building C – 650,000 square feet with parking structure; and including a pedestrian bridge over the San Tomas Aquino Creek. The three parcels would accommodate up to 1,950,000 square feet of office and high-tech lab buildings. The development will replace existing office and industrial buildings on three parcels.

Project Planner: Yen Han Chen, Associate Planner

Summary of Discussion

Ms. Painter and Mr. Chen provided an overview of the progress of the project.

Commissioner Champeny noted there are unavoidable, significant impacts from the project that would exacerbate the existing balance of jobs and housing and would affect global climate. It would have to be determined if benefits from the project would override the impacts. Ms. Painter said that information would be included in resolutions at the November 19th Planning Commission meeting.

The stated objectives of the project proponent and the objectives of the City, as outlined in the staff report, were discussed. There was discussion about mitigation measures, and Ms. Painter said the agreement with the developer outlines their contributions to the costs of public facilities and services as required to mitigate impacts of the development of the property. She said the City worked with the applicant, the County and the City of San Jose to ensure improvements would take place.

Mr. Chen made a Powerpoint presentation, followed by a presentation by the applicant, represented by John Hankey, NVIDIA Vice President; Dave Wilbur, Development Manager for Harvest Properties; and Tod Korth, architect. Mr. Hankey said the project will be NVIDIA's corporate headquarters and will host research and development activities worldwide. Mr. Wilbur said the corporate campus environment would benefit Santa Clara and the community in general. They are pledging funds toward regional transportation and local traffic improvements, a housing trust fund and the San Tomas Aquino Trail. He said the project would have a positive impact with regard to jobs and property taxes.

Resident Kevin Park said he would like to see developments such as this one. He expressed concern, however, about traffic, which is already heavy, and said the money pledged would not be sufficient to alleviate traffic impacts. He also expressed concern about the small parking stalls.

Commissioner Stattenfield asked what NVIDIA is already doing to mitigate traffic impacts. Mr. Hankey said they have bicycle lockers, showers, on site food, flex time, commuter passes and their

own shuttle service. There was discussion about parking and traffic issues. In response to Commissioners' questions and concerns, including questions from Commissioner Stattenfield about traffic equations included in the environmental impact report, Ms. Painter offered to bring the City's Traffic Engineer and consultant to the November 19th Planning Commission meeting. She also said staff would bring back a qualitative analysis of the positive effects associated with the San Tomas Expressway improvements.

Action:

Commissioner Marine moved to continue the public hearing to the November 19th Special Planning Commission meeting, seconded by Commissioner Stattenfield. The motion was approved unanimously.

REFERRALS

11. Staff Report regarding Public Hearing Noticing Procedures

Summary of Discussion

Ms. Sciara reported on the notification process for public hearing items, in response to a request for such information made by the Commission and City Council. There was discussion regarding how notices are currently processed by the City of Santa Clara and several neighboring communities and the feasibility of contracting out noticing services and collecting fees from developers to cover the mailings. Ms. Sciara said the in-house noticing system currently does not have the capability to include tenants, but a master address list to include tenants is being created for integration into the GIS system by the end of 2009.

There were questions from Commissioners concerning the possible use of email and the City's website for notifications. Ms. Painter said the City of San Jose has a program using this technology, but they have an entire department dedicated to this type of work. Ms. Sciara said State law requires a 300 foot notification radius but does not recognize email for this. She said notices are sometimes sent to a greater radius, up to 1,000 feet, due to a project's location, size or controversy. Attorney Hill emphasized the importance of having consistent criteria to follow. There was discussion concerning the present process and the potential for greater use of technology in notifying the public.

Action: Reviewed and commented

OTHER BUSINESS

12.A. Discussion Regarding Amending Planning Commission Minutes of September 24, 2008

Summary of Discussion

Commissioner Champeny said there had been a lot of conversation at the September 24th Planning Commission meeting about removing suitable habitat for burrowing owls with regard to the project at 2800 Mission College, and he wanted the minutes to show that due diligence was done. Commissioner Champeny distributed a list of the comments he had made at the meeting and said if the Commissioners agreed, the minutes could be amended to include these comments. Commissioner Stattenfield asked if the last condition on this list had been added to the conditions for the project that went to the City Council, and Mr. Riley said it had and that follow up was added to the mitigation monitoring report.

Ms. Sciara said if the Commission amended the minutes, the minutes would go to the City Council to be noted and filed.

Commissioner Marine moved to accept Commissioner Champeny's comments as amendments to the September 24, 2008 Planning Commission minutes. Commissioner Stattenfield seconded the

City Of Santa Clara Planning Commission Minutes **November 12, 2008 (4)**

Public Hearing Items/Consent Calendar

None

*****End of Consent Calendar*****

ZONING

9. File: PLN2008-07176 (General Plan Amendment); PLN2008-07177 (Rezone ML to PD); PLN2008-07179 (Development Agreement); CEQ2008-01062 (EIR/ SCH#20080520111)
- Location: 2600, 2800 San Tomas Expressway, and 2400 Condensa Street, three parcels on 35.6-acre site located on both sides of San Tomas Aquino Creek channel, south of Central Expressway (APNs 224-11-065, 224-11-066, 216-2-128). Property is zoned ML (Light Industrial).
- Applicant: Harvest Properties
- Owner: Harvest 2400, LLC & Harvest-Granite San Tomas, LLC
- Request: **Certify Final Environmental Impact Report (EIR);**
General Plan Amendment #71 from Light Industrial to Office/Research and Development;
Rezone from ML (Light Industrial) to PD (Planned Development);
Development Agreement to vest development rights;
Architectural Review of San Tomas Business Park Campus Project.
- Project Description: San Tomas Business Park Campus Project – Project Application for Building A – 650,000 square feet with parking structure; Building B – 650,000 square feet with parking structure; Building C – 650,000 square feet with parking structure; and including a pedestrian bridge over the San Tomas Aquino Creek. The three parcels would accommodate up to 1,950,000 square feet of office and high-tech lab buildings. The development will replace existing office and industrial buildings on three parcels.
- Project Planner: Yen Han Chen, Associate Planner

Summary of Discussion

Chairperson Fitch announced that the Commission was continuing the public hearing on this item from November 12th. He said he had reviewed tapes and information from that meeting, at which he had not been present, and was up to speed on the issue.

Mr. Chen presented an overview of the project and said the City's Traffic Engineer and traffic and environmental consultants were present to answer any questions.

Ms. Painter said there were some typographical errors in the resolutions, which would be corrected.

Chairperson Fitch invited public comments. Resident Kevin Park expressed concerns about traffic and said the money that would be contributed by the developer would not be sufficient to mitigate traffic in the area. He also expressed concerns about uni-stall parking and about where an overflow of parking would go. Dave Wilbur, Development Manager for Harvest Properties, said most of Mr. Park's questions about parking had been addressed in the parking study, and he spoke about some average traffic delays which might be reduced. He said rather than designating half of the parking stalls to be 8 feet wide for compact cars and half to be 9 feet wide for larger vehicles, all the parking spaces would be 8 feet 6 inches wide. Ms. Painter said that most jurisdictions have adopted the 8 and a half foot standard for parking. Some discussion by Commissioners followed, then Commissioner Marine moved to close the public hearing, seconded by Commissioner O'Neill, and approved unanimously.

San Tomas Expressway is significantly affected. He asked some questions and raised issues about traffic mitigation and funding for mitigation. Commissioner O'Neill asked about the cumulative effects on traffic of different projects over time and about whether consideration was given with regard to buildings that are currently vacant but will be occupied in the future. Traffic consultant Michelle Hunt said their cumulative analysis included every project known including pending projects and projects in adjacent cities, and that the analysis included recent traffic counts. Commissioner Marine asked whether the five million dollars to be contributed by the developer for traffic mitigation would have to be returned if budget constraints or unforeseen issues prevented the County from performing the mitigations. Ms. Painter said AB 1600 provides a 5-year term for impact fees, which was the term used in this agreement, and the money would have to be returned to the developer if it were not used during that time for the designated purposed. Further discussion followed about traffic mitigation issues.

Commissioner Marine moved to certify the Final Environmental Impact Report, seconded by Commissioner Stattenfield. The motion passed 6-1, with Commissioner O'Neill voting against the motion.

Commissioner Marine moved to approve General Plan Amendment #71 from Light Industrial to Office/Research and Development, seconded by Commissioner Stattenfield. The motion was approved unanimously.

Commissioner Marine moved to approve the rezone from Light Industrial (ML) to Planned Development (PD), seconded by Commissioner Barcells. The motion was approved unanimously.

Commissioner Marine moved to approve the Development Agreement to vest the development rights, seconded by Commissioner Stattenfield. Commissioner Stattenfield expressed concern about whether the traffic mitigations would be addressed by the County within the 5 year period. Other Commissioners also weighed in with concerns about the County's priorities and availability of funds at the County, State and federal levels. Attorney Hill said 5 years was recommended. A vote was taken, and the motion was approved unanimously.

Ms. Painter offered to hold a special Planning Commission study session concerning traffic analyses prior to a regular meeting. She said she would contact the Commissioners for scheduling.

10. OTHER BUSINESS

A. Commission Procedures and Staff Communications

- i. Announcements/Other Items – None
- ii. Report of the Director of Planning and Inspection - Mr. Riley reported on the November 18th meeting.

11. ADJOURNMENT

The meeting was adjourned at 8:20 p.m.

Respectfully submitted:

Susan Landers
Office Specialist IV

Approved: _____
Gloria Sciara, AICP
Development Review Officer

Approved: _____
Kevin L. Riley, AICP
Director of Planning & Inspection

Yen Chen

From: Shannon George [sgorge@davidjpowers.com]
Sent: Wednesday, November 19, 2008 11:17 AM
To: Yen Chen
Cc: Gloria Sciara; Carol Anne Painter
Subject: RE: Comment from DOT for San Tomas Business Park

Yen,
The response would be the same as it was in the FEIR.

The cumulative analysis does not assume completion of all the cumulative projects by the year 2010. The reference to 2010 in the traffic report (Appendix E of the DEIR) is an error and has been corrected in the text revisions in Section VI of this FEIR. As required by CEQA, the analysis included all approved but not yet built development and all pending or reasonably foreseeable development known to this City and likely to contribute to cumulative impacts. The Phase II North San José Development may not occur for many years, for example.

The CEQA guidelines (Section 15130) do not require or recommend a long term horizon for a cumulative analysis. The use of known projects instead of modeled projections is consistent with the level of specificity of the proposed project and conforms to CEQA and the CEQA guidelines.

Looking at the TIA, they did not clarify the statement about the completion date of the proposed project, which is what I think is confusing DOT. The analysis in the TIA is sufficient, as discussed in the response above.

From: Yen Chen [mailto:YChen@santaclaraca.gov]
Sent: Tuesday, November 18, 2008 4:50 PM
To: Shannon George
Cc: Gloria Sciara; Carol Anne Painter
Subject: Comment from DOT for San Tomas Business Park

Hi Shannon,
Just received this letter from the Department of Transportation. Please review and provide response for PC meeting tomorrow night.

- Yen

PC 11/19/08

AGENDA ITEM #9

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, GOVERNOR

DEPARTMENT OF TRANSPORTATION

P. O. BOX 23660
OAKLAND, CA 94623-0660
PHONE (510) 622-5491
FAX (510) 286-5559
TTY 711

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NOV 18 2008

City of Santa Clara
Planning Division



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November 18, 2008

SCL-101-41.98
SCL101856
SCH2008052011

Mr. Yen Han Chen
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Dear Mr. Han Chen:

San Tomas Business Park – Final Environmental Impact Report (FEIR)

Thank you for continuing to include the California Department of Transportation (Department) in the environmental review process for the proposed project. We have reviewed the FEIR and have the following comments to offer.

Traffic Forecasting

Cumulative Conditions (Response B4)

Note that most CEQA documents for projects in the Bay Area apply 2030 as the cumulative year. The year 2010 does not reflect cumulative traffic impacts to State facilities. The response states that the reference to 2010 in the traffic report is an error and has been corrected in the text revisions in Section VI of this FEIR. We cannot find the specific correction, other than 2010 on page 61 of the text revisions in Section VI of this FEIR. Therefore, we recommend the updated traffic impact study include 2030 Cumulative Conditions Only and 2030 Cumulative plus Projects Conditions.

Should you require further information or have any questions regarding this letter, please call José L. Olveda of my staff at (510) 286-5535.

Sincerely,

Lisa Carboni

LISA CARBONI
District Branch Chief
Local Development – Intergovernmental Review

c: Scott Morgan (State Clearinghouse)

(5)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA CLARA, CALIFORNIA, CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT ("FEIR"), MAKE FINDINGS WITH RESPECT THERETO, ADOPTING THE MITIGATION MONITORING AND REPORTING PROGRAM AND APPROVING A STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE PROJECT LOCATED AT 2600, 2800 SAN TOMAS EXPRESSWAY AND 2400 CONDENSEA STREET, SANTA CLARA, CALIFORNIA

SCH# 20080520111
CEQ2008-01062 (Final EIR)
PLN2008-07176 (General Plan Amendment)
PLN2008-07177 (Rezone ML to PD)
PLN2008-07179 (Development Agreement)
PLN2008-07178 (Lot Line Adjustment)
PLN2008-07180 (Architectural Review)

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA, CALIFORNIA, AS FOLLOWS:

WHEREAS, Harvest Properties, Inc. ("Harvest") made an application for the development of a site consisting of 35.63 acres located at 2600, 2800 San Tomas Expressway and 2400 Condensa Street, Santa Clara, California ("Project Site"); and

WHEREAS, an application has been made to amend the 1992 City of Santa Clara General Plan designation for the Project Site from Light Industrial to Office/Research and Development; and

WHEREAS, an application has been made to rezone the Project Site from Light Industrial (ML) to Planned Development (PD) to allow for the creation of a corporate campus consisting of up to 1,950,000 square feet of office and high-tech lab buildings, which are up to eight (8) stories and 140 feet in height, as measured from grade to roof line, and to construct a maximum parking ratio of 3.63/1000 square feet averaged over the Project Site ("Project") as shown on the

development plan, referenced herein as Exhibit B ("Development Plan,") of the Development Agreement (attached as Exhibit 8 to Council Agenda Report dated November 26, 2008); and

WHEREAS, Harvest is proposing a development agreement to preserve the size and density of development as set forth in the PD and the City is willing to enter into a development agreement for the reasons enumerated in the City Code of Santa Clara, California ("Code") Section 17.10.010; and

WHEREAS, the Project entitlements will include Certification of the FEIR, a General Plan Amendment from Light Industrial to Office/Research and Development, a rezoning of the Project Site from Light Industrial to a PD zone, the adoption of a Development Agreement, a Lot Line Adjustment, and Architectural Review (collectively, "Entitlements"); and

WHEREAS, on April 29, 2008, the City of Santa Clara ("City") circulated a Notice of Preparation of a draft Environmental Impact Report ("DEIR") to review and analyze the environmental impacts of the Project; and

WHEREAS, the City distributed copies of the DEIR to the public agencies which have jurisdiction by law with respect to the Project and to other interested persons and agencies and sought the comments of such persons and agencies for forty-five (45) days, beginning on August 26, 2008 ("Comment Period"); and

WHEREAS, the City prepared written responses to the comments received during the Comment Period and included these responses in a separate volume entitled Final Environmental Impact Report for the Project FEIR (SCH#20080520111). The FEIR consists of: a list of agencies and organizations to whom the DEIR was sent, a list of the comment letters received on the DEIR, revisions to the text of the DEIR, responses to comments received on the DEIR, and copies of

comment letters. The FEIR was subsequently circulated for a 10-day review period, in accordance with CEQA, on November 7, 2008; and

WHEREAS, the City Council has reviewed the FEIR prepared for the Project, City Staff reports pertaining to the FEIR and all evidence received. All of these documents and evidence are herein incorporated by reference into this Resolution; and

WHEREAS, the FEIR identified certain significant and potentially significant adverse impacts on the environment caused by the Project and the implementation of certain mitigation measures to avoid the significant impacts; and

WHEREAS, the City is required whenever possible, pursuant to CEQA, to adopt all feasible mitigation measures or feasible project alternatives that can substantially lessen or avoid any significant environmental impacts of the Project.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA, CALIFORNIA, AS FOLLOWS:

1. That the City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. That the City Council hereby finds that the FEIR has been completed in compliance with CEQA.
3. That the Planning Commission reviewed and considered the information and analysis contained in the FEIR before recommending that the City Council certify the FEIR and make the required findings, under the California Environmental Quality Act, set forth herein.
4. That the City Council finds, pursuant to Public Resources Code Section 21081 and California Code of Regulations, Title 14, Section 15091, that many of the proposed mitigation

measures described in the FEIR are feasible, and therefore shall become binding upon the City and affected landowners and their assigns or successors in interest when the Project is approved.

5. That, in order to comply with Public Resources Code Section 21080.6, the City Council hereby adopts the mitigation monitoring and reporting program as set forth in Exhibit D, ("MMRP") of the Development Agreement. The program is designed to ensure that, during project implementation, the City, affected landowners, their assigns and successors in interest and any other responsible parties comply with the feasible mitigation measures identified. The mitigation and monitoring program identifies, for each mitigation measure, the party responsible for implementation.

6. That the FEIR sets forth environmental impacts that would be significant or potentially significant in the absence of mitigation measures. As to each such impact, the City Council hereby finds that changes or alterations incorporated into the project, by the applicant or by the conditions of approval, will mitigate or avoid the significant or potentially significant environmental impacts.

7. That, as to the specific traffic impacts set forth in the FEIR which would be significant or potentially significant in the absence of mitigation measures, the City Council hereby finds that a fair share traffic payment to contribute to construction of improvements under the control of another jurisdiction will mitigate or avoid the significant or potentially significant environmental traffic impacts for the Project. These fair share contributions are shown in Exhibit F ("Fair Share Mitigations") of the Development Agreement. While the improvements are likely to be constructed, these improvements are located outside the jurisdiction of the City and thus the implementation of these traffic mitigations is not assured; therefore the traffic impacts could

become significant and unavoidable because the construction of the improvements could become infeasible.

8. That the FEIR, as stated below, sets forth Project and Cumulative Impacts which are significant and unavoidable and which cannot be mitigated or avoided through the adoption of feasible mitigation measures or feasible alternatives. As to these impacts, pursuant to Public Resources Code Section 21081 and CEQA Guidelines Sections 15091 et seq., the City Council hereby finds them infeasible and approves the following Statement of Overriding Considerations which justifies the occurrence of those impacts.

a. Significant Unavoidable Impacts. The Project will cause significant, unavoidable impacts including impacts to (i) land use, as it will result in a net increase in the industrial/office space within the City and increase the existing jobs/housing imbalance, and (ii) transportation, as the Project would result in significant level of service (LOS) impacts for one intersection and the identified freeway segment impacts. Also, stated in the FEIR, the Project will cumulatively contribute to significant, unavoidable impacts which include land use, transportation, air quality and global climate change. These aforementioned Project and cumulative significant unavoidable impacts cannot be avoided or substantially reduced by feasible changes or alterations to the Project because other than the changes or alterations already adopted, there are specific economic, legal, social and technological benefits of the Project, as set forth below, which outweigh the unavoidable environmental affects.

b. Statement of Overriding Considerations. Despite the significant unavoidable impacts listed above, the City Council hereby finds that the Project benefits outweigh the unavoidable significant impacts. These overriding considerations are:

(i) The Project proposes to redevelop the underutilized Project Site into a more efficient, viable campus environment for corporate use which can take advantage of transit opportunities by concentrating jobs near existing transit facilities; and

(ii) The Project will retain and promote quality job growth within the City of Santa Clara and the geographically constrained region; and

(iii) The Project will provide financial assistance to enhance and support construction and maintenance of the San Tomas Aquino Creek Trail system; and

(iv) The PD Permit and the Entitlements associated with the Project set forth the specific future development parameters in order to achieve consistency throughout the phased Project; and

(v) The Project will provide positive economic benefit to the City because the corporate users, employees and visitors will be a primary source of potential business; and

(vi) The Project will contribute to the City's Housing Fund to assist with the creation of housing and the subsidizing of low-income housing, where needed or required, and,

(vii) The Project will incorporate "Green Building" designs and aim to be LEED Certified to offset air quality and global climate change impacts, as well as to serve as an example for future projects within the City.

9. That the City Council hereby finds that the proposed reduced height project alternative set forth in the FEIR cannot feasibly, substantially lessen or avoid those significant adverse environmental effects not otherwise lessened or avoided by the adoption of all feasible mitigation measures set forth in the FEIR, and that it further would not meet the project objectives set forth in the FEIR.

10. That the City Council hereby finds that the Project is consistent with the City of Santa Clara General Plan, as it will be amended from Light Industrial to Office/Research and Development, and is the best way to implement the goals and policies of the General Plan.

11. Based on the findings set forth in this Resolution, the evidence in the City Staff Report, and any statements made at the City Council meeting of December 2, 2008, the City Council hereby certifies the FEIR, makes findings concerning mitigation measures, adopts the MMRP program, makes findings concerning alternatives, and makes findings that there exist certain overriding economic, social and other considerations for approving the Project that justify the occurrence of those Project impacts, all in accordance with CEQA for the Project.

12. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this Resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City Council hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

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**I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF THE
RESOLUTION PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF
SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON
THE 2ND DAY OF DECEMBER, 2008, BY THE FOLLOWING VOTE:**

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ABSTAINED: COUNCILMEMBERS:

ATTEST:

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA CLARA, CALIFORNIA, APPROVING THE GENERAL PLAN AMENDMENT FOR THE PROPERTY LOCATED AT 2600, 2800 SAN TOMAS EXPRESSWAY AND 2400 CONDENSEA STREET, SANTA CLARA, CALIFORNIA

SCH# 20080520111
CEQ2008-01062 (Final EIR)
PLN2008-07176 (General Plan Amendment)
PLN2008-07177 (Rezone ML to PD)
PLN2008-07179 (Development Agreement)
PLN2008-07178 (Lot Line Adjustment)
PLN2008-07180 (Architectural Review)

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA, CALIFORNIA, AS FOLLOWS:

WHEREAS, Harvest Properties, Inc. ("Harvest") made an application for a General Plan Amendment in connection with development of a site consisting of 35.63 acres located at 2600, 2800 San Tomas Expressway and 2400 Condensa Street, Santa Clara, California ("Project Site") in order to change the General Plan Land Use Designation to increase the limited building height permitted in Light Industrial (70 feet) to Office/Research and Development (70 feet unless special designs or mixed uses are proposed and a rezoning to Planned Development is obtained); and

WHEREAS, Harvest made an application to rezone the Project Site to a Planned Development (PD) Zone to support the creation of a corporate campus consisting of 1,950,000 square feet of office and high-tech lab buildings, which are up to eight (8) stories and 140 feet in height, as measured from grade to roof line, and to construct a maximum parking ratio of 3.63/1000 square feet averaged over the Project Site ("Project"); and

WHEREAS, the Government Code requires that a General Plan amendment be made only if “in the public good”; and

WHEREAS, notice of the public hearing on the General Plan Amendment was published in the *Santa Clara Weekly*, a newspaper of general circulation, on November 19, 2008; and

WHEREAS, notices of the public hearing on the General Plan Amendment were mailed to all property owners within a 1000-foot radius of the property, according to the most recent assessor’s roll; and

WHEREAS, before considering the General Plan Amendment for the Project Site, the City Council reviewed and considered the information contained in the Final Environmental Impact Report (“FEIR”) for the Project (SCH #2008052011); and

WHEREAS, the City Council certified the FEIR and found that the mitigation measures identified in the FEIR should be incorporated into the FEIR and imposed on the Project, sufficient to mitigate or avoid the significant environmental effects and that there are specific economic, social and other considerations which make infeasible the project alternatives that would avoid or mitigate the environmental impacts; and

WHEREAS, the Project entitlements will include Certification of the FEIR (“FEIR Resolution”), a General Plan Amendment from Light Industrial to Office/Research and Development (“General Plan Amendment”), a rezoning of the Project Site from Light Industrial(ML) to a PD zone, the adoption of a Development Agreement, a Lot Line Adjustment, and Architectural Review (collectively, “Entitlements”); and

WHEREAS, the Planning Commission recommended approval of the General Plan Amendment at its November 19, 2008, special meeting; and

WHEREAS, the City Council has reviewed the General Plan Amendment and conducted a public hearing.

NOW, THEREFORE, BE IT FURTHER RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA THAT IT APPROVE THE GENERAL PLAN AMENDMENT AS FOLLOWS:

1. That the City Council finds and determines that the General Plan Amendment is in the interest of the public good because the General Plan Amendment will change the General Plan Land Use Designation to allow for increased height, but will require special designs, including a corporate campus, as proposed in the PD.
2. That, based on the findings set forth in this Resolution, the FEIR Resolution and the evidence in the City Staff Report and such other evidence as received at the public hearing on this matter, the City Council hereby approves the amendment of the General Plan which will change the General Plan Land Use Designation for the Project Site to increase the limited building height from Light Industrial (70 feet) to Office/Research and Development (70 feet unless special designs or mixed uses are proposed and a rezoning to Planned Development is obtained).
3. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City Council of the City of Santa Clara hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

**I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION
PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SANTA
CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 2ND
DAY OF DECEMBER, 2008, BY THE FOLLOWING VOTE:**

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ABSTAINED: COUNCILMEMBERS:

ATTEST:

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF SANTA CLARA, CALIFORNIA, REZONING THE
PROPERTY LOCATED AT 2600, 2800 SAN TOMAS
EXPRESSWAY AND 2400 CONDENSE STREET, SANTA
CLARA, CALIFORNIA**

SCH# 20080520111
CEQ2008-01062 (Final EIR)
PLN2008-07176 (General Plan Amendment)
PLN2008-07177 (Rezone ML to PD)
PLN2008-07179 (Development Agreement)
PLN2008-07178 (Lot Line Adjustment)
PLN2008-07180 (Architectural Review)

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA,
CALIFORNIA, AS FOLLOWS:**

WHEREAS, Harvest Properties, Inc. ("Harvest") made an application for the development of a site consisting of 35.63 acres located at 2600, 2800 San Tomas Expressway and 2400 Condense Street, Santa Clara, California ("Project Site"); and

WHEREAS, an application has been made to amend the 1992 City of Santa Clara General Plan designation for the Project Site from Light Industrial to Office/Research and Development; and

WHEREAS, the Project Site is currently zoned as Light Industrial (ML); and

WHEREAS, in order to effectuate the development application, the Project Site needs to be rezoned to a Planned Development (PD) Zone to support the creation of a corporate campus consisting of 1,950,000 square feet of office and high-tech lab buildings, which are up to eight (8) stories and 140 feet in height, as measured from grade to roof line, and to construct a maximum parking ratio of 3.63/1000 square feet averaged over the Project Site ("Project") as shown on the development plan, referenced herein as Exhibit B ("Development Plan,") of the

Development Agreement (attached as Exhibit 8 to Council Agenda Report dated November 26, 2008); and

WHEREAS, Harvest is proposing a development agreement to preserve the size and density of development as set forth in the PD and the City is willing to enter into a development agreement for the reasons enumerated in the City Code of Santa Clara, California ("Code") Section 17.10.010; and

WHEREAS, before considering the rezoning of the Project Site, the Planning City Council reviewed and considered the information contained in the Final Environmental Impact Report ("FEIR") for the Project (SCH #2008052011); and

WHEREAS, the City Council certified the FEIR and found that the mitigation measures identified in the FEIR should be incorporated into the FEIR and imposed on the Project, sufficient to mitigate or avoid the significant environmental effects and that there are specific economic, social and other considerations which make infeasible the project alternatives that would avoid or mitigate the environmental impacts; and

WHEREAS, the Project entitlements will include Certification of the FEIR ("FEIR Resolution"), a General Plan Amendment from Light Industrial to Office/Research and Development ("General Plan Amendment"), a rezoning of the Project Site from Light Industrial (ML) to a PD zone, the adoption of a Development Agreement, a Lot Line Adjustment, and Architectural Review (collectively, "Entitlements"); and

WHEREAS, Code Section 18.112.040 provides for the review and recommendation of the City's Planning Commission of all rezoning requests before action is to be taken by the City Council; and

WHEREAS, at its November 19, 2008, special meeting, the Planning Commission recommended that the City Council rezone the project site.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA, CALIFORNIA, AS FOLLOWS:

1. That, based on the findings set forth in this Resolution, the FEIR Resolution and evidence in the City Staff Report, the City Council hereby rezones the Project Site, consisting of approximately 35.63 acres, shown on Exhibit B of the Development Agreement, incorporated by this reference, from Light Industrial (ML) to Planned Development (PD), to be used as a corporate campus.
2. Pursuant to Code Section 18.12.110, the City Council hereby finds and determines that the public necessity or convenience of the general welfare require the rezoning set forth above in order to conserve property values, protect or improve the existing character and stability of the area in question, promote the orderly and beneficial development of such area, and allow imaginative planning and design concepts to be utilized which would otherwise be restricted in other zoning districts.
3. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City Council of the City of Santa Clara hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

///

**I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF THE
RESOLUTION PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF
SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON
THE 2ND DAY OF DECEMBER, 2008, BY THE FOLLOWING VOTE:**

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ABSTAINED: COUNCILMEMBERS:

ATTEST:

**ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA**

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
SANTA CLARA, CALIFORNIA, APPROVING A
DEVELOPMENT AGREEMENT BETWEEN THE CITY OF
SANTA CLARA AND HARVEST PROPERTIES, INC., FOR
THE PROPERTY LOCATED AT 2600, 2800 SAN TOMAS
EXPRESSWAY AND 2400 CONDENSE STREET, SANTA
CLARA, CALIFORNIA**

SCH# 20080520111
CEQ2008-01062 (Final EIR)
PLN2008-07176 (General Plan Amendment)
PLN2008-07177 (Rezone ML to PD)
PLN2008-07179 (Development Agreement)
PLN2008-07178 (Lot Line Adjustment)
PLN2008-07180 (Architectural Review)

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
SANTA CLARA, CALIFORNIA, AS FOLLOWS:**

WHEREAS, California Government Code Sections 65864 through 65869.51 ("Development Agreement Act") authorize cities to enter into binding development agreements with owners of real property and these agreements govern the development of the property; and

WHEREAS, Harvest Properties, Inc. ("Harvest") has requested that the City of Santa Clara ("City") enter into the type of agreement contemplated by the Development Agreement Act; and

WHEREAS, City staff have negotiated and recommend for approval a Development Agreement subject to specific conditions of approval, all incorporated by reference as Exhibit 8 ("Development Agreement") to Council Agenda Report dated November 26, 2008, with Harvest in connection with the proposed campus development located at 2600, 2800 San Tomas Expressway and 2400

Condensa Street, Santa Clara, California ("Project"); and

WHEREAS, the Project entitlements will include Certification of the Final Environmental Impact Report ("FEIR Resolution"), a General Plan Amendment from Light Industrial to Office/Research and Development ("General Plan Amendment"), a rezoning of the Project Site from Light Industrial(ML) to a PD zone, the adoption of a Development Agreement, a Lot Line Adjustment and Architectural Review, (collectively, "Entitlements"); and

WHEREAS, the City Council has reviewed the Development Agreement, conducted a properly-noticed public hearing and has considered all available facts related to the Development Agreement; and

WHEREAS, the City Council certified the FEIR and found that the mitigation measures identified in the FEIR should be incorporated into the FEIR and imposed on the Project, sufficient to mitigate or avoid the significant environmental effects and that there are specific economic, social and other considerations which make infeasible the project alternatives that would avoid or mitigate the environmental impacts; and

WHEREAS, the Development Agreement complies with all requirements of Government Code Section 65865.2; and

WHEREAS, at the November 19, 2008, special meeting, the Planning Commission unanimously recommended that the City Council adopt a Development Agreement Ordinance.

NOW THEREFORE, BE IT FURTHER ORDAINED THAT THE CITY COUNCIL OF THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: The Ordinance.

1. The City Council hereby finds and determines that the foregoing recitals are true and correct.

2. The City Council hereby finds and determines that the provisions of the Development Agreement are consistent with the General Plan of the City, as may be amended.
3. The City Council hereby finds and determines that the Development Agreement complies with all requirements of Government Code Section 65865.2.
4. The Development Agreement is hereby approved in substantially the form presented to the City Council, a copy of which is on file with the City Clerk and can be reviewed by members of the public at the City Clerk's Office, 1500 Warburton Avenue, Santa Clara, California.
5. The City Manager, or designee, is hereby authorized to execute the Development Agreement on behalf of the City, upon adoption of this ordinance, together with such non-substantive changes and amendments as may be approved by the City Manager and City Attorney. The City Manager, or designee, is authorized to take any action and execute any and all documents and agreements necessary to implement the Development Agreement.
6. Within ten (10) days after the City Manager, or designee, executes the Development Agreement, the City Clerk shall cause the Development Agreement to be recorded with the Santa Clara County Clerk-Recorder's Office.

SECTION 2: Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

SECTION 3: Effective Date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirement of Sections 808 and 812 of the Charter of the City of Santa Clara, California.

PASSED FOR THE PURPOSE OF PUBLICATION the 2nd day of December, 2008, by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ABSTAINED: COUNCILMEMBERS:

ATTEST: _____
ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA



DEVELOPMENT AGREEMENT

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

City of Santa Clara
City Hall
1500 Warburton Avenue
Santa Clara, California 95050

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF SANTA CLARA,
a municipal corporation,
and

Harvest 2400, LLC,
a California Limited Liability Corporation

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EXHIBITS

A.	Legal Description of Property
B.	Selected Pages of Development Plan
C.	Conditions of Approval
D.	Mitigation Monitoring and Reporting Program
E.	Insurance Requirements
F.	San Tomas Business Park Traffic Fair Share Mitigation and Cost

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is entered into by and between THE CITY OF SANTA CLARA ("**City**"), a California municipal corporation, and HARVEST 2400, LLC, a California Limited Liability Corporation ("**Developer**"), (collectively the "**Parties**") and is effective on the date set forth in Recital L. References to each of these parties herein shall also include their assignees and all successors in interest to any portion of the Property, as defined in Recital C.

Recitals

Developer and City enter into this Agreement on the basis of the following facts, understandings and intentions, and the following recitals are a substantive part of this Agreement:

- A.** Sections 65864 through 65869.5 of the California Government Code authorize the City to establish procedures to enter into binding development agreements with persons having legal or equitable interests in real property located within the City for development of property.
- B.** The City Code of the City of Santa Clara, California ("**Code**"), Section 17.10.010 and following, establishes the authority and procedure for review and approval of proposed development agreements.
- C.** Developer is currently the legal owner of the property ("**Property**") governed by this Agreement. The Property consists of three separate parcels (APNs 216-28-128, 224-11-065, and 224-11-066) totaling 35.63 acres, as further described in **Exhibit A**, attached hereto and incorporated by this reference.
- D.** Developer previously submitted to the City a Planned Development ("**PD**") zoning

application for development of the Property. The application requested that Developer be allowed to develop the acre Property with a corporate campus consisting of up to 1,950,000 square feet or 1.26 FAR, of office and high-tech laboratory buildings, which may be up to eight (8) stories, not to exceed 140 feet in height as measured from grade to roof line, and to construct parking up to a maximum ratio of 3.63/1000 square feet averaged over the entire property unless modified pursuant to Section 10.2; rezoning from Light Industrial (ML) to Planned Development (PD); approval of a lot line adjustment on the two parcels fronting San Tomas Expressway; and a General Plan Amendment to allow buildings up to eight stories and 140 feet in height (collectively, the "**Project**").

- E. The Project, including but not limited to the buildings, access and parking facilities, landscaping, and infrastructure improvements, are all more particularly shown on the development plan consisting of ____ sheets of plans submitted by _____ Architects dated _____ ("**Development Plan**"). Sheets ____ of the Development Plan are attached hereto as **Exhibit B** and incorporated by this reference.
- F. Through this Agreement, the Parties intend to preserve the size and density of development as set forth in the PD. City and Developer each acknowledge that development and construction of the Project is a large-scale undertaking involving major investments by Developer and City, and assurances that the Project can be developed and used in accordance with the terms and conditions set forth herein and the existing rules governing development of the Property will benefit both Developer and City.
- G. City is willing to enter this Agreement for the reasons enumerated in Code

Section 17.10.010 to (i) eliminate uncertainty in the comprehensive development planning of large-scale projects in the City, such as the Project; (ii) secure orderly development and fiscal benefits for public services, improvements and facilities planning in the City; (iii) meet the goals of the General Plan; and (iv) plan for and concentrate public and private resources for the mutual benefit of both Developer and City.

- H. Developer acknowledges and recognizes that material inducements for the City to enter into this Agreement are (i) opportunity to create a corporate campus; (ii) the occupancy of the Property by Nvidia, thereby retaining location and growth of Nvidia within the City of Santa Clara; (iii) the contributions by Developer to City's Housing Funds and toward the construction of the San Tomas Aquino Creek Trail, and (iv) the attainment of a LEED Standard for the Project.
- I. City's willingness to enter into this Agreement is a material inducement to Developer to implement the Project, and Developer proposes to enter this Agreement in order (i) to obtain assurance from City that the Property may be developed, constructed, completed and used pursuant to this Agreement and in accordance with existing policies, rules and regulations of the City, subject to the exceptions and limitations expressed herein and the term of this Agreement; and (ii) to provide for a coordinated and systematic approach to funding the cost of certain public improvements and facilities planned by the City, and to establish the timing and extent of contributions required from Developer for these purposes.
- J. Developer has requested City consider entering into a development agreement and proceedings have been taken in accordance with State law, as set forth below.

- K. On _____, City's Planning Commission held a duly noticed public hearing on this Agreement and (i) determined that consideration of this Agreement based on the Environmental Impact Report ("**EIR**") complies in all respects with the California Environmental Quality Act ("**CEQA**"); (ii) determined that this Agreement is consistent with the City's General Plan; and (iii) recommended that the City Council approve this Agreement.
- L. On _____, the City Council held a duly noticed public hearing on this Agreement and (i) determined that consideration of this Agreement based on the EIR complies in all respects with CEQA; (ii) determined that this Agreement is consistent with the City's General Plan; and (iii) introduced Ordinance No. _____ approving this Agreement.
- M. On _____, the City Council adopted Ordinance No. _____, enacting this Agreement, and the Ordinance became effective thirty (30) days later on _____ ("**Effective Date**").
- N. Certain improvements as set forth in the conditions of approval ("**Conditions of Approval**") which are attached hereto as **Exhibit C** and incorporated herein by this reference, are necessary to provide infrastructure support for the Project.
- O. Developer plans to develop the Project in three (3) phases, Phases I, II and III which are outlined in more detail in the Development Plan and Conditions of Approval. Any modification to the content and/or sequencing of the Phases must comply with Section 1, Paragraph 1.8 of this Agreement.

Agreement

NOW, THEREFORE, pursuant to the authority contained in Section 65864 and following, of

the California Government Code and City Code of the City of Santa Clara Section 17.10.010 and following, and in consideration of the mutual representations, covenants and promises of the Parties, the Parties hereto agree as follows:

1. Development of the Property.

1.1 Property. The Property that is the subject of this Agreement is that certain real property described in **Exhibit A** attached hereto.

1.2 Binding Covenants. It is intended and agreed that the provisions of this Agreement shall constitute covenants that shall run with the Property and the benefits and burdens hereof shall bind and inure to all successors in interest to the Parties hereto.

1.3 Term.

(a) The term ("**Term**") of this Agreement shall commence on the Effective Date set forth above, or on the effective date of Ordinance No. _____ approving this Agreement, whichever is later in time, and shall continue for a period of five (5) years, unless sooner terminated or extended as hereinafter provided.

(b) If a Certificate of Occupancy has been issued for at least fifty percent (50%) of Phase I as set forth in the Development Plan within five (5) years from the Effective Date, then the Term of the Agreement shall be automatically extended by five (5) years. If a Certificate of Occupancy has been issued for at least fifty percent (50%) of Phase II as set forth in the Development Plan within ten (10) years of the effective date, then the Term of the Agreement shall be extended by five (5) years upon written request by the Developer. In no event shall the maximum term of this Agreement be longer than fifteen (15) years from the Effective Date.

(c) Prior to the issuance of a Building Permit for the construction of each Phase, Developer shall pay their non-refundable Regional Traffic Fee of One Dollar (\$1.00) per square foot, and the non-refundable Local Traffic Fee of One Dollar (\$1.00) per square foot, to be determined based upon the net square footage for that entire Phase. Net square footage is defined as the occupiable building square footage subject to the issuance of a Building Permit, less the occupiable square footage subject to a Demolition Permit, excluding parking structures, trash enclosures and similar non-occupiable facilities. If Developer fails to make said payment in full, then no Building Permit will be issued, and the rights vested by this Agreement with respect to the undeveloped square footage for which payment has not been received by the City, shall cease to exist.

(d) Following expiration of the Term or any extension, or if sooner terminated, this Agreement shall have no force and effect, subject, however, to post-termination obligations of Developer and City.

1.4 Life of Approvals. Pursuant to Government Code Section 66452.6(a) and this Agreement, the life of the Project approvals, including but not limited to certification of the EIR, adoption of the General Plan Amendment, approval of the Resolution to rezone the Property to a PD zoning, approval of the Development Agreement Ordinance and this Development Agreement, approval of a Lot Line Adjustment, and architectural approval of the Project (collectively, "**Approvals**") shall automatically be extended to and until the later of the following: (1) the end of the Term of this Agreement; or (2) the end of the term or life of any such approval. Notwithstanding the foregoing, the vested rights secured by Developer under this

Agreement shall have a life no greater than the Term of this Agreement, and any extension thereof.

1.5 Vested Elements. The permitted uses of the Property, the maximum density and intensity of use, the maximum heights, locations, numbers and gross square footage of the proposed buildings, the provisions for vehicular access and parking, reservation or dedication of land for public purposes or fees in-lieu thereof, provision for construction of public improvements and/or required fees associated with the Project shall be vested, as provided in, and limited by, this Agreement. In addition to the foregoing vested elements, other terms and conditions of development applicable to the Project are hereby vested and referred to as vested elements ("**Vested Elements**") are set forth in the following documents as they exist as of the Effective Date:

- (a) The General Plan of the City of Santa Clara, current as of the Effective Date, the terms and conditions of which are incorporated herein by this reference;
- (b) The Code, current as of the Effective Date, including the rezoning of the Property from ML to PD ("**Rezoning**");
- (c) The Planned Development Zoning District and the Conditions of Approval imposed thereon;
- (d) The Development Plan, defined in Recital E, herein;
- (e) All other applicable City plans, policies, programs, regulations, ordinances, and resolutions of the City in effect as of the Effective Date, which regulate development of the Property and implementation of the Project, and which are not inconsistent with the terms of this Agreement ("**Other Regulations**").

(f) Any permits and/or subsequent approvals, including but not limited to additional subdivision maps or lot line adjustments, if any, final maps, site and architectural review, demolition permits, Building Permits, grading permits, and infrastructure improvement plans processed in accordance with the terms of this Agreement. Upon approval, such subsequent approvals shall be incorporated into this Agreement and vested hereby.

1.6 Permitted Uses. The permitted uses for the Property are as follows: a corporate campus consisting of up to 1,950,000 square feet on 35.63 acres (up to 1.26 FAR averaged on the entire property) with office and high-tech laboratory buildings, which are up to eight (8) stories and 140 feet in height measured from grade to roofline and parking up to a maximum ratio of 3.63/1000 square feet averaged on the entire property unless modified pursuant to Section 10.2, all of which must be implemented in accordance with the Development Plan and the Conditions of Approval.

1.7 Present Right to Develop. Subject to Developer's fulfillment of the provisions of this Agreement, the Development Plan and the Conditions of Approval, the City hereby grants to Developer the present vested right to develop and construct on the Property all the improvements authorized by, and in accordance with, this Agreement and the Vested Elements, including in particular the terms of the Development Plan and the Rezoning. To the extent permitted by law, no future modification (including by later-adopted initiative and/or referendum) of the City's General Plan, Code, ordinances, policies or regulations that purport to (i) limit the rate or timing of development, size of buildings or other improvements (including

developable square footage), or amount of development of the portions of the Project to be built; (ii) require inclusion in future solid waste franchise agreements, or (iii) impose fees, exactions or conditions upon development, occupancy or use of the Property other than as provided in the Development Plan or Conditions of Approval or pursuant to this Agreement, shall apply to the Property; provided, however, that nothing in this Agreement shall prevent or preclude City from adopting any fees or land use regulations or amendments thereto, expressly permitted herein.

1.8 Timing of Improvements. Developer may implement the Development Plan in phases, as described herein or as outlined in the Development Plan, or as otherwise approved by the City. The phasing set forth in the Development Plan is the approved Phasing as of the Effective Date; however, Developer may request alternate phasing in writing based on business constraints or considerations. Prior to implementation, alternate phasing must be approved in writing by the City's Director of Planning and Inspection ("**Director**"), whose approval shall not be unreasonably withheld taking into consideration whether the terms and conditions of this Agreement, the Development Plan, the Conditions of Approval and the Mitigation Monitoring and Reporting Program are met and that the revised phasing will not unduly burden, hamper or constrain prior or future phases of the Project. It is the Parties' specific intent that this Agreement shall prevail over any later-adopted initiative or moratorium that might otherwise have the effect of restricting or limiting the timing of development of the Project and that Developer shall have the right to develop the Project at such time as Developer deems appropriate subject to 1.3 (b) within the exercise of its subjective business judgment and no annual (or other) limit,

moratoria, or other limitation upon the number of, or phasing or pacing of, buildings which may be constructed, or Building Permits which may be obtained, or the like shall apply to the Project.

1.9 Agreement and Comprehensive Development Plan. The Parties acknowledge that, except as specifically set forth herein, this Agreement, the Development Plan, the Mitigation Monitoring and Reporting Program and the Conditions of Approval set forth a comprehensive schedule of all development terms and conditions, development mitigation measures and fees, special assessments, special taxes, exactions, fees in-lieu, charges and dedications required in the public interest to be contributed, paid or constructed due to development of the Property as defined in the Development Plan. All fees referred to herein, may be subject to an annual increase until paid, but only if such increase is applied equally to similarly situated projects on a City-wide or area-wide basis, and any such annual increase shall be limited in the manner specified in Section 3.

1.10 Design of On-Site and Off-Site Improvements. Development of the Property shall be subject to final architectural and design review by City pursuant to the policies, regulations and ordinances in effect as of the Effective Date, and subject to the Development Plan, the Conditions of Approval, Mitigation Monitoring and Reporting Program, and this Agreement. No such architectural and design review shall, without Developer's consent, require development of the Property inconsistent with the Development Plan, the Conditions of Approval, the Mitigation Monitoring and Reporting Program, and this Agreement, unless City determines it is necessary to protect against conditions which create a risk to the physical health or

safety of residents or users of the Project or the affected surrounding region. The Development Plan, Mitigation Monitoring and Reporting Program, and Conditions of Approval, and all improvement plans prepared in accordance thereof, shall govern the design and scope of all on-site and off-site improvements benefiting or to be constructed on the Property. In no event shall final architectural and design approval by City be conditioned on or require any change in the Development Plan, Mitigation Monitoring and Reporting Program or Conditions of Approval, without Developer's consent.

1.11 Development of the Site. In consideration for the City entering into this Agreement, Developer agrees to perform all of its obligations contained in this Agreement in the time and manner set out in this Agreement and the Development Plan, Mitigation Monitoring and Reporting Program, and Conditions of Approval.

1.12 Single Integrated Development. City and Developer acknowledge that the Project is, and shall be considered, a single, integrated development. It is thus the intention of the Parties that, if construction on one component of the Project is commenced, any additional development of the Property will adhere to the Development Plan. However, nothing in this Agreement is intended: (i) to prevent Developer from individually commencing and completing development of any portion or phase of the Project, even if development on other portions or phases thereof has not been commenced and/or completed; (ii) to prevent Developer from independently marketing, selling, renting or occupying all, or any portion of, such developed space, provided that all current obligations under this Agreement and the Development Plan and all infrastructure requirements for the existing developed

space have been met; and (iii) to require Developer to develop any portion or phase of the Project (even if development on another portion of phase of the Project has been commenced and/or completed). Nothing in this Section, however, shall be construed as permitting Developer to develop later phases of the Project before earlier phases, unless the phasing plan has been amended in accordance with Section 1.8.

1.13 Occupancy. Developer and/or its successor acknowledge and agree that for the term of this Agreement, a corporate campus shall be located on the Property unless otherwise approved pursuant to Section 12.

1.14 Building Standards. Developer hereby agrees to employ all reasonable efforts such that the Project will be built to, and certified in, accordance with LEED Standards for each phase of development.

2. Effect of Agreement.

2.1 Subsequent State or Federal Laws or Regulations. As provided in California Government Code Section 65869.5, this Agreement shall not preclude the application to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are required by changes in county, regional, State or federal laws or regulations ("**Changes in the Law**"). In the event Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, Developer may request that such provisions be modified or suspended, or performance delayed, as may be necessary to comply with Changes in the Law, and City shall respond within a reasonable time and may take such action as it deems necessary to be consistent with the intent of this Agreement.

2.2 Changes to Existing Regulations. Except as otherwise specifically provided, only the following changes to the Vested Elements, including such changes adopted by the electorate through the powers of initiative, or otherwise, shall apply to the development of the Property:

(a) Subject to Section 3 herein, Citywide regulations, ordinances, policies, programs, resolutions or fees adopted after the Effective Date that are not in conflict with the Vested Elements and the terms and conditions for development of the Property established by this Agreement, or otherwise applicable regulations existing as of the Effective Date. Changes to the General Plan, Code or other regulations shall be deemed to conflict with the approvals and this Agreement ("**Conflicting City Law**") if such changes prevent development of the Property in substantial accordance with the Approvals; requires significant changes in the development of the Property from what is contemplated by the Approvals; significantly delay, ration or imposes a moratorium on development of the Property; or require the issuance of discretionary or nondiscretionary permits or approvals by the City other than those required as of the Effective Date. A fee shall be deemed to conflict with this Agreement if it is an increase in an existing fee by more than the amount permitted pursuant to Section 3 below.

(b) Any law, regulation or policy which would otherwise be Conflicting City Law, but through this Agreement or by later separate document, application to the Property has been consented to in writing by the Developer.

2.3 Further Reviews. Developer acknowledges that existing land use regulations, the Vested Elements and this Agreement contemplate the possibility of

further reviews of elements or portions of the Project by the City including potential CEQA analysis if required by project modification or change in environmental conditions. Nothing in this Agreement shall be deemed to limit the legal authority of City with respect to these reviews as provided by, and otherwise consistent with, this Agreement. In no event shall such further review by City revisit the Development Plan, Conditions of Approval, or the Approvals or be conditioned on or require any change in the Project except as contemplated by the Development Plan, Conditions of Approval or this Agreement.

2.4 Local Rules. Future development on the Property shall be subject to all the official rules, regulations and policies (collectively, "**Local Rules**") of the City which govern uses, architectural design, landscaping, public improvements and construction standards, and which are contained in the Development Plan or are in effect as of the Effective Date, with the exception that revisions or amendments to the Local Rules necessitated by reasonable public health or fire and life-safety considerations shall apply as though the rules were in effect as of the Effective Date.

Notwithstanding any other provision of this Agreement, and without limitation as to any other exceptions contained in this Agreement, City shall retain the authority to take the following actions, so long as such action is applied on a Citywide basis to similarly situated projects:

- (a) Adopt and apply property transfer taxes and/or excise taxes;
- (b) Adopt and apply utility charges;
- (c) Adopt updates to building and/or fire codes;
- (d) Maintain the right of voters to act by initiative or referendum, but only

to the extent that the initiative or referendum does not affect or interfere with any vested rights acquired by the Developer in this Agreement; except that this Agreement itself is subject to referendum; and,

(e) Take other actions not expressly prohibited by the terms or provisions of this Agreement.

2.5 Future Exercise of Discretion by City. This Agreement shall not be construed to limit the authority or obligation of City to hold necessary public hearings, or, except as provided herein, to limit discretion of the City or any of its officers or officials with regard to rules, regulations, ordinances or laws which require the exercise of discretion by City or any of its officers or officials. Except as provided herein, this Agreement shall not prevent City from applying new rules, regulations and policies, or from conditioning future Project development approval applications on new rules, regulations and policies that do not conflict with the terms of the Development Plan or this Agreement.

3. Development Fees, Exactions and Dedications. The fees, special assessments, special taxes, exactions and dedications (collectively "Fees") payable due to the development, build out, occupancy and use of the Property pursuant to this Agreement shall be exclusively those set forth in the Conditions of Approval and the Development Plan or as specified in this Agreement. Notwithstanding any amendments to the Fees or imposition of any new City fees, taxes, special assessments or other exactions after the Effective Date, the Fees set forth in the Conditions of Approval and/or the Development Plan shall be the only fees, charges, special assessments, special taxes, dedications and exactions payable to City due to development of the Property.

3.1 Processing Fees. Processing fees including without limitation, Building Permit fees ("**Processing Fees**"), may be increased if the increase is applicable Citywide and reflects the reasonable cost to City of performing the administrative processing or other service for which the particular Processing Fee is charged. New Processing Fees may be imposed if the new Processing Fees apply to all similarly situated projects or works within the City and if the application of these Processing Fees to the Property is prospective only. Processing Fees shall be due and payable on a phase by phase basis, so that only those fees applying to the actual construction of each phase shall be paid upon the issuance of the appropriate permits for that phase. Developer shall pay the costs associated with the planning, processing and environmental review process for the Project, provided that such costs shall be limited to (i) reasonable costs directly associated with the preparation of the EIR; (ii) fees ordinarily charged by City for processing land use applications and permits, provided that such fees and costs are applied to Developer in the same manner as other similarly situated applicants seeking similar land use approvals and are not limited in applicability to the Project or to related uses; and (iii) fees associated with third-party permit plan checking, if applicable, above those normally charged by the City. Developer shall reimburse City for reasonable staff overtime expenses incurred by City in processing review, approval, inspection and completion of the Project provided that such overtime expenses are (a) reasonably necessary for the completion of the Project in accordance with Developer's schedule; and (b) applied to Developer in the same manner as similarly situated project applicants.

3.2 Reimbursement. Notwithstanding the foregoing limitations on Processing

Fees, Developer agrees to reimburse City for expenses over and above Processing Fees paid by Developer as an applicant for reasonable costs incurred by City relating to the expedited processing of entitlements and environmental review related to this Agreement. The cumulative amount of any such reimbursement paid to the City pursuant to this Section, if any, shall not exceed \$40,000.00 (Forty Thousand Dollars). Such reimbursement shall be due within ten (10) days of Effective Date of the Agreement.

3.3 Dedications. Developer shall offer to dedicate to City, upon request by City, all portions of the Property designated in the Conditions of Approval for public easements, streets or public areas.

3.4 Mitigations. Developer agrees to contribute to the costs of public facilities and services in the amounts set forth in the Development Plan, Mitigation Monitoring and Reporting Program and Conditions of Approval, as required to mitigate impacts of the development of the Property ("**Mitigations**"). City and Developer recognize and agree that but for Developer's contributions to mitigate the impacts arising as a result of the entitlements granted pursuant to this Agreement, City would not and could not approve the development of the Property as provided by this Agreement. City's approval of development of the Property is in reliance upon, and in consideration of, Developer's agreement to make contributions toward the cost of public improvements and public services as provided to mitigate the impacts of development of the Property.

3.5 Housing Fund Contribution. Developer agrees to pay the sum of three hundred thousand dollars (\$300,000.00) to the City for the Housing Fund, to be paid

upon the issuance of Building Permits for Phase I.

3.6 Contribution to Trails. Developer agrees to pay the sum of three hundred thousand dollars (\$300,000.00) to the City for the San Tomas Aquino Creek Trail upon the issuance of Building Permits for Phase I.

3.7 Regional Traffic Fee. Developer agrees to the sum of one dollar (\$1.00) per net new building square footage payable to the City at the issuance of Building Permits in accordance with Section 1.3(c). City agrees to apply these funds toward the project Fair Share Traffic Fees imposed under Section 3, Paragraph 3.9.

3.8 Local Traffic Fee. Developer agrees to the sum of one dollar (\$1.00) per net new building square footage payable to the City at the issuance of Building Permits in accordance with Section 1.3(c).

3.9 Fair Share Traffic Fees. Developer agrees to post a bond or letter of credit upon execution of this Agreement in the sum of four million nine hundred fifty-three thousand nine hundred and sixty-five dollars (\$4,953,965.00) payable to the City for the Project's contribution to the intersection improvements identified in the certified Environmental Impact Report and allocated as shown in Exhibit F. The bond or letter of credit will be subsequently reduced by the amount of the Regional Traffic Fee collected by the City for each Phase of the development. Fair Share fees paid by the Developer must be expended within five (5) years of receipt by the City of the initial bond or letter of credit toward improvements to the intersections identified for mitigation in the certified Environmental Impact Report for the Project, as shown in Exhibit F, otherwise Developer's fair share obligation shall be null and void and returned to the Developer with respect to those intersections that are

unimproved and the bond or letter of credit for that portion shall be released. The City may call the bond or letter of credit for an amount equal to the Developer's fair share, less applicable regional fees collected, anytime following the approval of a construction contract for the identified improvements for intersections identified in Exhibit F by the lead agency. Regional and Local Traffic Fees are non-refundable.

3.10 Sewer Connection Fee. If the City should adopt an ordinance subsequent to the Effective Date of this Agreement that permits an acknowledgement of reduced Sewer Connection Fees as a result of onsite conservation measures, the Developer may apply for consideration of such reductions toward the Sewer Connection Fees paid on behalf of the Project. Applications may be filed for any Phase of the development if that Phase has a minimum of one year of 90% occupancy prior to receipt of the application.

3.11 Transportation Services. Developer agrees to reasonably participate in exploring the feasibility of adding transportation services to link businesses with multi-modal transit in cooperation with the City, other public agencies, and other local business interests.

4. **Standard of Review of Permits.** All permits ("**Permits**") required by Developer to develop the Property, excepting the Rezoning, but including (i) road construction permits, (ii) grading permits, (iii) Building Permits, (iv) fire permits, and (v) Certificates of Occupancy, shall be issued by City after City's review and approval of Developer's applications, provided that City's review of the applications is limited to determining whether the following conditions are met:

- (a) The application is complete; and,

(b) The application demonstrates that Developer has complied with this Agreement, the Development Plan, the Mitigation Monitoring and Reporting Program, the Conditions of Approval and the applicable Local Rules.

5. **Priority.** In the event of conflict between the General Plan, this Agreement, the Code, Other Regulations and Local Rules, all as they exist on the Effective Date, the Parties agree that the following sequence establishing the relative priority of each item: (1) the General Plan, as existing on the Effective Date; (2) this Agreement; (3) the Development Plan, (4) Mitigation Monitoring and Reporting Program, (5) the Approvals, and (6) the Code, Other Regulations and Local Rules.

6. **Cooperation in Implementation.** Upon Developer's satisfactory completion of all required preliminary actions provided in the Development Plan, and payment of required fees, if any, City shall proceed in a reasonable and expeditious manner, in compliance with the deadlines mandated by applicable agreements, statutes or ordinances, to complete all steps necessary for implementation of this Agreement and development of the Property in accordance with the Development Plan, including the following actions:

(a) Scheduling all required public hearings by the Planning Commission and City Council; and,

(b) Processing and checking all maps, plans, land use and architectural review permits, permits, building plans and specifications and other plans relating to development of the Property filed by Developer as necessary for complete development of the Property. Developer, in a timely manner, shall provide City with all documents, applications, plans and other information necessary for the City to carry out its obligations hereunder and to cause City's planners, engineers and all other consultants to submit in a

timely manner all necessary materials and documents. It is the Parties' express intent to cooperate with one another and diligently work to implement all land use and building approvals for development of the Property in accordance with the Development Plan and the terms hereof. At Developer's request, City shall retain outside building consultants to review plans or otherwise assist City's efforts in order to expedite City processing and approval work, at Developer's sole expense. City shall cooperate with Developer, and assist Developer in obtaining any third-party governmental or private party permits, approvals, consents, rights of entry, or encroachment permits, needed for development of the Project or any other on or offsite improvements.

7. Periodic Review.

7.1 Annual Review. City and Developer shall review all actions taken pursuant to the terms of this Agreement annually during each year of the Term, within thirty (30) days prior to each anniversary of the Effective Date unless the City and Developer agree in writing to conduct the review at another time pursuant to City Code Section 17.10.220(a).

7.2 Developer's Submittal. Within ninety (90) days before each anniversary of the Effective Date, Developer shall submit a letter ("**Compliance Letter**") to the Director describing Developer's compliance with the terms of the Conditions of Approval and this Agreement during the preceding year. The Compliance Letter shall include a statement that the Compliance Letter is submitted to the City pursuant to the requirements of Government Code Section 65865.1, this Agreement, and the City Code.

7.3 City's Findings. Within sixty (60) days after receipt of the Compliance Letter,

the Director shall determine whether, for the year under review, Developer has demonstrated good faith substantial compliance with the terms of this Agreement. If the Director finds and determines that Developer has complied substantially with the terms of this Agreement, or does not determine otherwise within sixty (60) days after delivery of the Compliance Letter, the annual review shall be deemed concluded, Developer shall be deemed to have complied in good faith with the terms and conditions of this Agreement during the year under review, and this Agreement shall remain in full force and effect. Upon a determination of compliance, the Director shall, if requested by Developer, issue a recordable certificate confirming Developer's compliance through the year under review. Developer may record the certificate with the Santa Clara County Recorder's Office. If the Director initially determines the Compliance Letter to be inadequate in any respect, he/she shall provide notice to that effect to Developer as provided in Code Section 17.10.220. If, after a duly noticed public hearing thereon, the City Council finds and determines based on substantial evidence that Developer has not complied substantially in good faith with the terms of this Agreement for the year under review, the City Council shall give written notice thereof to Developer specifying the noncompliance and such notice shall serve as a notice of default under Section 9.1. If Developer fails to cure the noncompliance within a reasonable period of time as established by the City Council, the City Council, in its discretion, may (i) grant additional time for compliance by Developer, or (ii) following the hearing described in Code Section 17.10.250, modify this Agreement to the extent necessary to remedy or mitigate the non-compliance, or (iii) terminate this Agreement. Except as affected

by the terms hereof, the terms of City Code Section 17.10.240(b)(2), and following, shall govern the City's compliance review process. During any review, Developer shall bear the burden of proof to demonstrate good faith compliance with the terms of this Agreement. If the City Council does not hold a hearing and make its determination within one hundred and twenty (120) days after delivery of the Compliance Letter for a given year, then it shall be deemed conclusive that Developer has complied in good faith with the terms and conditions of this Agreement during the period under review.

8. Reimbursements. The Parties agree that Developer shall not be entitled to any reimbursement for the construction of any private or public improvement required by this Agreement, unless explicitly provided by this Agreement or the Conditions of Approval.

9. Default and Remedies.

9.1 Default. Failure by either Party to perform any material term or provision of this Agreement shall constitute a default, provided that the Party alleging the default gave the other Party advance written notice of the default and thirty (30) days to cure the condition, or, if the nature of the default is such that it cannot be cured within thirty (30) days, the Party receiving notice shall not be in default if the Party commences performance of its obligations within the thirty (30) day period and diligently completes that performance. Written notice shall specify in detail the nature of the obligation to be performed by the Party receiving notice.

9.2 Remedies. It is acknowledged by the Parties that City and Developer would not have entered into this Agreement if City or Developer were to be liable in damages under, or with respect to, this Agreement or the application thereof. City

and Developer shall not be liable in damages to each other, or to any assignee, transferee or any other person, and Developer and City covenant not to sue for or claim damages from the other. Upon Developer's or City's material default, and failure to cure within a reasonable time depending on the nature of the default after demand by the non-defaulting Party, the non-defaulting Party shall institute mediation under Section 26 of this Agreement. If mediation fails to resolve the dispute, each Party shall have the right, in addition to all other rights and remedies available under this Agreement, to (i) bring any proceeding in the nature of specific performance, injunctive relief or mandamus, and/or (ii) bring any action at law or in equity as may be permitted by law or this Agreement. The Parties acknowledge that monetary damages and remedies at law generally are inadequate upon the occurrence of a default. Therefore, specific performance or other extraordinary equitable relief (such as injunction) is an appropriate remedy for the enforcement of this Agreement, other remedies at law being inadequate under all the circumstances pertaining as of the Effective Date of this Agreement and any such equitable remedy shall be available to the Parties.

9.3 Default by Developer/Withholding of Building Permit. City may, at its discretion, without submitting to mediation, refuse to issue a Building Permit for any structure within the Property, if Developer has materially failed and refused to complete any requirement that is a Condition of Approval, or that is applicable to the Building Permit requested. In addition, where City has determined that Developer is in default as described above, City may also refuse to issue the Developer any permit or entitlement for any structure or property located within the Project. This

remedy shall be in addition to any other remedies provided for by this Agreement.

10. Amendment or Termination.

10.1 Agreement to Amend or Terminate. Subject to Section 22 regarding operating memoranda and Section 10.2 regarding future actions and minor changes, City and Developer, by mutual agreement, may terminate or amend the terms of this Agreement, pursuant to Section 24.

10.2 Development Plan. City and Developer anticipate that the Project will be implemented in accordance with the Approvals, the Development Plan, Mitigation Monitoring and Reporting Program, and the Conditions of Approval. The foregoing actions and other necessary or convenient implementation actions shall not require an amendment to this Agreement. City and Developer understand and acknowledge that changes to the Project which would not, in the discretion of the City, substantially comply with the Approvals, Development Plan, Mitigation Monitoring and Reporting Program, and/or the Conditions of Approval would necessitate subsequent review and approval which will not be unreasonably withheld or delayed. Upon the written request of Developer, City may agree to make a substantive amendment or modification to the Development Plan (or any of the individual Approvals or documents comprising the Development Plan) in compliance with procedural provisions of the zoning or other land use ordinances and regulations in effect on the date of application for amendment or modification. The amendment or modification of the Development Plan shall be done pursuant to a Development Agreement Amendment pursuant to Government Code provisions and Sections 10.1 and 24, unless treated as a minor change as described below.

The remaining portions of this Agreement shall remain in full force and effect subsequent to the Amendment. For the purposes of this Section, minor changes to the Development Plan, including but not limited to an increase in the allowed parking ratio as deemed appropriate by the Director based on information provided by the Developer that demonstrates greater building efficiency than contemplated by the Approvals, that, under the City Code, may be approved by the Director, pursuant to City Code Section 18.56.120, upon application by the Developer, shall not be considered amendments to the Development Plan and shall not require a Development Agreement Amendment. Upon the Director's approval, these actions shall become part of the approved Development Plan and this Agreement, and shall be deemed Vested Elements.

10.3 Enforceability of Agreement. The City and Developer agree that unless this Agreement is amended or terminated pursuant to its terms, this Agreement shall be enforceable by either Party notwithstanding any subsequent change in any applicable General Plan, Redevelopment Plan, Specific Plan, Code, Other Regulation or Local Rule adopted by City, with the exceptions listed in this Agreement.

11. Mortgagee Protection: Certain Rights of Cure

11.1 Mortgagee Protection. This Agreement shall be superior and senior to all liens placed upon the Property or any portion thereof after the date on which this Agreement or a memorandum thereof is recorded, including the lien of any deed of trust or mortgage ("**Mortgage**"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in

good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against all persons and entities, including all deed of trust beneficiaries or mortgagees ("**Mortgagees**") who acquire title to the Property or any portion thereof by foreclosure, trustee's sale, deed in-lieu-of foreclosure, voluntary transfer, or otherwise.

11.2 Mortgagee Obligations. City, upon receipt of a written request from a foreclosing Mortgagee, shall permit the Mortgagee to succeed to the rights and obligations of Developer under this Agreement, provided that all defaults by Developer hereunder that are reasonably susceptible of being cured are cured by the Mortgagee as soon as reasonably possible, provided, however, that in no event shall such Mortgagee personally be liable for any defaults or monetary obligations of Developer arising prior to acquisition of possession of such property by such Mortgagee. The foreclosing Mortgagee shall have the right to find a substitute developer to assume the obligations of Developer, which substitute shall be considered for approval by the City pursuant to Section 12 of this Agreement, but shall not, itself, be required to comply with all of the provisions of this Agreement.

11.3 Notice of Default to Mortgagee. If City receives notice from a Mortgagee requesting a copy of any notice of default given to Developer and specifying the address for service thereof, City shall endeavor to deliver to the Mortgagee, concurrently with service thereof to Developer, all notices given to Developer describing all claims by the City that Developer has defaulted hereunder. If City determines that Developer is not in compliance with this Agreement, City also shall endeavor to serve notice of noncompliance on the Mortgagee concurrently with

service on Developer. Each Mortgagee shall have the right, but not the obligation, during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the condition of default claimed or the areas of noncompliance set forth in City's notice.

12. Assignability.

12.1 Assignment. Neither Party shall convey, assign or transfer ("**Transfer**") any of its interests, rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. In no event shall the obligations conferred upon Developer under this Agreement be transferred except through a transfer of all or a portion of the Property. Should Developer transfer any of its interests, rights or obligations under this Agreement, it shall nonetheless remain liable for performance of the obligations for installation of public improvements and payment of fees, unless the transferee executes an Assumption Agreement in a form reasonably acceptable to the City whereby the transferee agrees to be bound by the relevant terms of the Agreement, including the obligations for installation of public improvements and payment of fees.

During the Term, Developer shall provide City with written notice of a request to Transfer any interest in this Agreement ninety (90) days prior to any such contemplated Transfer. Any such request for a Transfer shall be accompanied by quantitative and qualitative information, to the City's satisfaction that substantiates that the proposed transferee has the financial capability to fulfill the rights and obligations of this Agreement. Within forty-five (45) days of such a request and delivery of information, the City Manager, sufficient, in the City's reasonable

discretion, shall make a determination whether the Transfer shall be permitted or whether such Transfer necessitates an Amendment to this Agreement, subject to approval by the City Council. Each successor in interest to Developer shall be bound by all of the terms and provisions applicable to the portion of the Property acquired. This Agreement shall be binding upon and inure to the benefit of the Parties' successors, assigns and legal representatives. This Agreement shall be recorded by the City in the Santa Clara County Recorder's Office promptly upon execution by each of the Parties.

12.2 Covenants Run With The Land. The terms of this Agreement, the PD Zoning, the General Plan Amendment, and this Development Agreement are legislative in nature, and apply to the Property as regulatory ordinances. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall run with the land and shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring the Property, any lot, parcel or any portion thereof and any interest therein, whether by sale, operation of law or other manner, and shall inure to the benefit of the Parties and their respective successors.

12.3 Pre-Approved Transfers. The following transfers shall not require approval by the City, and shall automatically, upon the satisfaction of the other conditions in Section 12.1 above, result in the release of Developer of its obligations hereunder as they may relate specifically to the specific property or asset sold or transferred:

(a) sale or lease of the property in its entirety to Nvidia prior to the issuance of any

Building Permits, (b) sale or lease of one or more buildings to Nvidia, and (c) a loan or mortgage pertaining to the Property.

12.4 Release Upon Transfer. Upon the transfer, sale, or assignment of Developer's rights and interests hereunder pursuant to the preceding subparagraph of this Agreement, Developer shall be released from the obligations under this Agreement with respect to the Property transferred, sold, or assigned, arising subsequent to the date of City approval of such transfer, sale, or assignment; provided, however, that any transferee, purchaser, or assignee approved by the City expressly assumes the obligations of Developer under this Agreement. In any event, the transferee, purchaser, or assignee shall be subject to all the provisions hereof and shall provide all necessary documents, certifications and other necessary information prior to City approval.

12.5 Non-Assuming Transferees. Except as otherwise required by a transferor, the burdens, obligations and duties of such transferor under this Agreement shall not apply to any purchaser of any individual non-residential condominium units offered for sale.

The transferee in a transaction described above and the successors and assigns of such a transferee shall be deemed to have no obligations under this Agreement, but shall continue to benefit from the vested rights provided by this Agreement for the duration of the Term hereof. Nothing in this Section shall exempt any property transferred to a non-assuming transferee from payment of applicable fees, taxes and assessments or compliance with applicable conditions of approval.

12.6 Foreclosure. Nothing contained in this Section 12 shall prevent a transfer of the

Property, or any portion thereof, to a lender as a result of a foreclosure or deed in lieu of foreclosure, and any lender acquiring the Property, or any portion thereof, as a result of foreclosure or a deed in lieu of foreclosure shall take such Property subject to the rights and obligations of Developer under this Agreement; provided, however, in no event shall such lender be liable for any defaults or monetary obligations of Developer arising prior to acquisition of title to the Property by such lender, and provided further, in no event shall any such lender or its successors or assigns be entitled to a building permit or occupancy certificate until all fees due under this Agreement (relating to the portion of the Property acquired by such lender) have been paid to City.

13. Controlling Law. This Agreement shall be governed by the laws of the State of California, and the exclusive venue for any disputes or legal actions shall be the County of Santa Clara. Developer shall comply with all requirements of State and federal law, in addition to the requirements of this Agreement, including, without limitation, the payment of prevailing wages, if required. In any event, Developer shall pay prevailing wages for all work on off-site public improvements related to the Project.

14. General.

14.1 Construction of Agreement. The language in this Agreement in all cases shall be construed as a whole and in accordance with its fair meaning.

14.2 No Waiver. No delay or omission by either Party in exercising any right or power accruing upon the other Party's noncompliance or failure to perform under the provisions of this Agreement shall impair or be construed to waive any right or power. A waiver by either Party of any of the covenants or conditions to be performed by Developer or City shall not be construed as a waiver of any

succeeding breach of the same or other covenants and conditions.

14.3 Agreement is Entire Agreement. This Agreement and all exhibits attached hereto or incorporated herein, together with the Development Plan, Mitigation Monitoring and Reporting Program, and the Conditions of Approval, contain the sole and entire Agreement between the Parties concerning the Property. The Parties acknowledge and agree that they have not made any representation with respect to the subject matter of this Agreement or any representations inducing the execution and delivery, except representations set forth herein, and each Party acknowledges that it has relied on its own judgment in entering this Agreement. The Parties further acknowledge that all statements or representations that heretofore may have been made by either of them to the other are void and of no effect, and that neither of them has relied thereon in its dealings with the other. To the extent that there is any conflict between the approved Development Plan and this Agreement, the approved Development Plan shall govern the Parties' respective rights and obligations.

14.4 Estoppel Certificate. Either Party from time to time may deliver written notice to the other Party requesting written certification that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and constitutes a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, or, if it has been amended or modified, specifying the nature of the amendments or modifications, and, (iii) the requesting Party does not have knowledge of default in the performance of its obligations under this Agreement, or if in known default, describing therein the nature and monetary amount, if any, of the default. A Party receiving a request shall execute and return

the certificate within thirty (30) days after receipt thereof. The City Manager shall have the right to execute the certificates requested by Developer. At the request of Developer, the certificates provided by City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form, and Developer shall have the right to record the certificate for the affected portion of the Property at its cost.

14.5 Severability. Each provision of this Agreement which is adjudged by a court of competent jurisdiction to be invalid, void or illegal shall in no way shall affect, impair or invalidate any other provisions hereof, and the other provisions shall remain in full force and effect.

14.6 Further Documents. Each Party shall execute and deliver to the other all other instruments and documents as may be reasonably necessary to carry out this Agreement.

14.7 Time of Essence. Time is of the essence in the performance of each and every covenant and obligation to be performed by the Parties hereunder.

14.8 Defense and Indemnification Provisions. Developer hereby releases and agrees to protect, defend, hold harmless and indemnify City, its City Council, its officers, employees, agents and assigns from and against all claims, injury, liability, loss, cost and expense or damage, however same may be caused, including all costs and reasonable attorney's fees in providing the defense to any claim from third parties arising from the performance or non-performance of this Agreement. This provision is intended to be broadly construed and extends to, among other things, any challenge to the validity of this Agreement, environmental review for the project,

entitlements, or anything related to the passage of the Agreement or any other Project processing and approvals by the City.

14.9 Construction. This Agreement has been reviewed and revised by legal counsel for both the City and Developer and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

15. Termination.

15.1 Termination. This Agreement shall terminate upon the earlier of (i) expiration of the Term, or (ii) when the Property has been fully developed and all of Developer's obligations have been fully satisfied as reasonably determined by City, or (iii) after all appeals have been exhausted before a final court of judgment, or issuance of a final court order directed to the City to set aside, withdraw, or abrogate the City's approval of this Agreement or any material part thereof. Upon termination of this Agreement as to all of the Property at the request of Developer, the City shall record a *Notice of Termination* for each affected parcel in a form satisfactory to the City Attorney in the Office of the Santa Clara County Recorder.

15.2 Effect Upon Termination on Developer Obligations. Termination of this Agreement as to the Developer shall not affect any of the Developer's obligations to comply with the City's General Plan, Code, Conditions of Approval (including any environmental mitigation measures) or any terms and conditions of any applicable zoning, or subdivision map or other land use entitlement approved with respect to the Project, nor shall it affect any other covenants or development requirements in this Agreement specified to continue after the termination of this Agreement, or

obligations to pay assessments, liens, fees or taxes.

15.3 Effect Upon Termination on City. Upon any termination of this Agreement as to all or a portion of the Property, the Approvals, Development Plan, Conditions of Approval, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested with respect to the Property, or portion thereof, and the City shall no longer be limited by this Agreement, to make any changes or modifications to the Approvals, conditions or fees applicable to the Property or portion thereof.

16. Notices. Except as otherwise expressly provided herein, all notices and demands pursuant to this Agreement shall be in writing and delivered in person, by commercial courier or by first-class certified mail, postage prepaid. Except as otherwise expressly provided herein, notices shall be considered delivered when personally served, upon delivery if delivered by commercial courier, or two (2) days after mailing if sent by mail. Notices shall be sent to the addresses below for the respective parties; provided, however, that either Party may change its address for purposes of this Section by giving written notice to the other Party. These addresses may be used for service of process:

City:	City Clerk City of Santa Clara 1500 Warburton Avenue Santa Clara, CA 95050
With copy to:	City Attorney City of Santa Clara 1500 Warburton Avenue Santa Clara, CA 95050
Developer:	Harvest 2400, LLC. Dave Wilbur, Senior Partner 6475 Christie Avenue, Suite 550 Emeryville, CA 94608

With copy to: Mindie S. Romanowsky
Jorgenson, Siegel, McClure and Flegel, LLP
1100 Alma Street, Suite 210
Menlo Park, CA 94025

Mark Y. Altman
Nvidia Corporate Counsel
2701 San Tomas Expressway
Santa Clara, CA 95050

16.1 Effect of Notice. The provisions of this Section shall be deemed directive only and shall not detract from the validity of any notice given in a manner that would be legally effective in the absence of this Section.

17. Developer is an Independent Contractor. Developer is not an agent or employee of City, but is an independent contractor with full rights to manage its employees subject to the requirements of the law. All persons employed or utilized by Developer in connection with this Agreement are employees or contractors of Developer and shall not be considered employees of City in any respect.

18. Project as a Private Undertaking. It is specifically understood and agreed that the Project is a private development. No partnership, joint venture or other association of any kind between City and Developer is formed by this Agreement.

19. Nondiscrimination. Developer shall not discriminate, in any way, against any person on the basis of race, color, national origin, gender, marital status, sexual orientation, age, creed, religion, or disability in connection with or related to the performance of this Agreement.

20. Insurance. During the term of this Agreement, Developer shall purchase and maintain in full force and effect, at least the following insurance policies:

- (a) Commercial general liability insurance;

(b) Comprehensive automobile injury insurance (bodily injury and property damage) with respect to employees and vehicles assigned to performance of work under this Agreement;

(c) Workers' compensation, employer's liability. Developer shall, during the term of this Agreement, and at no expense to City, maintain the insurance policies, with limits of coverage, endorsements and with the required certificates as set forth in the attached **Exhibit E** entitled "Insurance Requirements." The scope and form of each respective insurance coverage shall be subject to approval of the City Attorney's Office. City must approve all insurance coverages and carriers prior to Developer's commencement of work under this Agreement.

21. Force Majeure. In addition to any specific provisions of this Agreement, performance of obligations hereunder shall be excused and the term of this Agreement shall be similarly extended during any period of delay caused at any time by reason of: floods, earthquakes, fires, or similar catastrophes; wars, riots or similar hostilities; strikes and other labor difficulties beyond the Party's reasonable control; the enactment of new laws or restrictions imposed by other governmental or quasi-governmental entities preventing this Agreement from being implemented; or litigation involving this Agreement or the Approvals, which delays any activity contemplated hereunder, unless such action is brought by Developer and the City is not found to have fault. City and Developer shall promptly notify the other Party of any delay hereunder as soon as possible after the same has been, or should have been ascertained.

22. Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between City and Developer, and refinements and further development of the

Project may demonstrate that clarifications with respect to the details of performance of City and Developer or minor revisions to the Project are appropriate. If and when, from time to time, during the term of this Agreement, City and Developer agree that such clarifications or minor modifications are necessary or appropriate, they may effectuate such clarifications through operating memoranda approved by City and Developer, which, after execution, shall be attached hereto. No such operating memoranda shall constitute an Amendment to this Agreement requiring public notice or hearing. The City Attorney shall be authorized in their sole discretion, to make the determination whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such a character to require an amendment hereof pursuant to Section 24 hereof. The City Manager may execute any operating memoranda hereunder without City Council action.

23. Third Parties. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or the Approvals, the Parties shall reasonably cooperate in defending such action. Developer shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse City for all reasonable court costs and attorneys' fees expended by City in defense of any such action or other proceedings.

24. Amendments. No alterations or changes to the terms of this Agreement shall be valid unless made in writing and signed by both Parties, and completed in compliance with the procedures listed in the City Code and/or the Government Code for Development Agreement Amendments.

25. No Third Party Beneficiary. This Agreement shall not be construed or deemed to be an Agreement for the benefit of any third party or parties, and no third party or parties

shall have any claim or right of action hereunder for any cause whatsoever.

26. Dispute Resolution.

(a) Any controversies between Developer and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.

(b) The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.

(c) The costs of the mediator, shall be borne by the Parties equally; however, each Party shall bear its own attorney, consultant, staff, and miscellaneous fees and costs.

(d) Mediation under this Section is a condition precedent to filing an action in any court, but it is not a condition precedent to the City's refusal to issue a Building Permit or any other entitlement under Section 4.

27. Consent. Where consent or approval of a Party is required or necessary under this Agreement, the consent or Agreement shall not be unreasonably withheld or delayed.

28. Covenant of Good Faith and Fair Dealing. Neither Party to this Agreement shall do anything which shall have the effect of harming or injuring the right of the other Party to receive benefits of this Agreement; each Party shall refrain from doing anything which would render its performance under this Agreement impossible; and, each Party shall do

everything which this Agreement contemplates to accomplish the objectives and purpose of this Agreement.

29. Authority to Execute. The person or persons executing this Agreement on behalf of Developer warrant and represent that they have the authority to execute this Agreement on behalf of Developer, and further represent that they have the authority to bind Developer to the performance of its obligations in this Agreement.

30. Counterparts. This Agreement may be executed in multiple originals, each of which is deemed an original, and may be signed in Counterparts. The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

(Signature Attached)
CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

City

Approved as to Form:

HELENE L. LEICHTER
City Attorney

JENNIFER SPARACINO
City Manager

Attest:

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Facsimile: (408) 241-6771

ROD DIRIDON, JR.
City Clerk

Developer

HARVEST 2400, LLC,
a California Limited Liability Corporation

By: _____
Name: _____
Title: _____
Telephone: _____
Facsimile: _____

By: _____
Name: _____
Attorney: _____
Telephone: _____
Facsimile: _____

NVIDIA

By: _____
Name: _____
Title: _____
Telephone: _____
Facsimile: _____

EXHIBIT A
LEGAL PROPERTY DESCRIPTION

LEGAL DESCRIPTION

Real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

PARCEL 1:

PARCEL SIX, SO DESIGNATED AND DELINEATED ON THE PARCEL MAP RECORDED NOVEMBER 2, 1981 IN BOOK 491 OF MAPS, PAGES 42, 43 AND 44.

PARCEL 1A

PERPETUAL NONEXCLUSIVE EASEMENTS APPURTENANT TO SAID PARCEL SIX FOR (i) INGRESS AND EGRESS TO AND FROM SAID LAND; AND (ii) STORM DRAIN SEWERS; AND (iii) SANITARY SEWERS; AND (iv) GAS LINES, AS GRANTED BY MCCANDLESS - SAN TOMAS NO.2 TO MCCANDLESS - SAN TOMAS NO.1 ACCORDING TO THE RECIPROCAL EASEMENT AGREEMENT, GRANT OF PROPERTIES, RECONVEYANCE OF PROPERTIES, AND SUBORDINATION AGREEMENT RECORDED NOVEMBER 2, 1981 IN BOOK G427, PAGE 19, OFFICIAL RECORDS.

PARCEL 1B

PERPETUAL NONEXCLUSIVE EASEMENTS APPURTENANT TO SAID PARCEL SIX FOR STORM DRAIN SEWERS, AS GRANTED BY MCCANDLESS - SAN TOMAS NO. 2 TO MCCANDLESS - SAN TOMAS NO. 1 ACCORDING TO THE RECIPROCAL EASEMENT AGREEMENT RECORDED APRIL 22, 1982 IN BOOK G739, PAGE 514, OFFICIAL RECORDS.

PARCEL 2:

PARCEL SEVEN, SO DESIGNATED AND DELINEATED ON THE PARCEL MAP RECORDED NOVEMBER 2, 1981 IN BOOK 491 OF MAPS, PAGES 42, 43 AND 44.

PARCEL 2A

PERPETUAL NONEXCLUSIVE EASEMENTS APPURTENANT TO SAID PARCEL SEVEN FOR INGRESS AND EGRESS TO AND FROM SAID LAND, AS GRANTED BY MCCANDLESS - SAN TOMAS NO. 1 TO MCCANDLESS - SAN TOMAS NO.2 ACCORDING TO THE RECIPROCAL EASEMENT AGREEMENT, GRANT OF PROPERTIES, RECONVEYANCE OF PROPERTIES, AND SUBORDINATION AGREEMENT RECORDED NOVEMBER 2, 1981 IN BOOK G427, PAGE 19, OFFICIAL RECORDS.

PARCEL 2B

PERPETUAL NONEXCLUSIVE EASEMENTS APPURTENANT TO SAID PARCEL SEVEN FOR STORM DRAIN SEWERS, AS GRANTED BY MCCANDLESS - SAN TOMAS NO. 1 TO MCCANDLESS - SAN TOMAS NO. 2 ACCORDING TO THE RECIPROCAL EASEMENT AGREEMENT RECORDED APRIL 22, 1982 IN BOOK G739, PAGE 514, OFFICIAL RECORDS.

APN: 224-11-065 (Affects: Parcel 2) and 224-11-066 (Affects: Parcel 1)

PROPERTY LEGAL DESCRIPTION

LEGAL DESCRIPTION

Real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

ALL OF PARCEL T, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP LANDS FORMERLY OF BRACHER FRUIT CO.", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JANUARY 2, 1973 IN BOOK 314 OF MAPS, PAGE 29.

EXCEPTING THEREFROM THAT PORTION OF SAID LAND CONVEYED TO THE CITY OF SANTA CLARA, A CHARTERED MUNICIPAL CORPORATION IN THE DEEDS RECORDED NOVEMBER 4, 1997 AS INSTRUMENT NO. 13922600, OFFICIAL RECORDS ON JULY 3, 2002 AS INSTRUMENT NO. 16343559, OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PARCEL T AS SHOWN ON THAT CERTAIN PARCEL MAP RECORDED IN BOOK 314 OF MAPS, AT PAGE 29, SANTA CLARA COUNTY RECORDS;

THENCE FROM SAID POINT OF BEGINNING, WESTERLY ALONG THE NORTHERLY LINE OF PARCEL T, SOUTH $89^{\circ} 15' 31''$ WEST, 8.54 FEET;

THENCE, FROM A TANGENT BEARING SOUTH $60^{\circ} 25' 20''$ EAST, ALONG THE ARC OF A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 20 FEET, THROUGH A CENTRAL ANGLE OF $53^{\circ} 17' 23''$, AND AN ARC LENGTH OF 18.60 FEET;

THENCE, FROM A TANGENT BEARING NORTH $7^{\circ} 07' 57''$ WEST, ALONG THE ARC OF A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 70 FEET, THROUGH A CENTRAL ANGLE OF $7^{\circ} 24' 00''$, AND AN ARC LENGTH OF 9.04 FEET TO A POINT OF REVERSE CURVATURE;

THENCE, FROM SAID POINT OF REVERSE CURVATURE, ALONG A CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 20 FEET, THROUGH A CENTRAL ANGLE OF $17^{\circ} 27' 18''$, AND AN ARC LENGTH OF 6.09 FEET TO THE POINT OF BEGINNING.

APN: 216-28-128

EXHIBIT B
SELECTED PAGES OF DEVELOPMENT PLAN

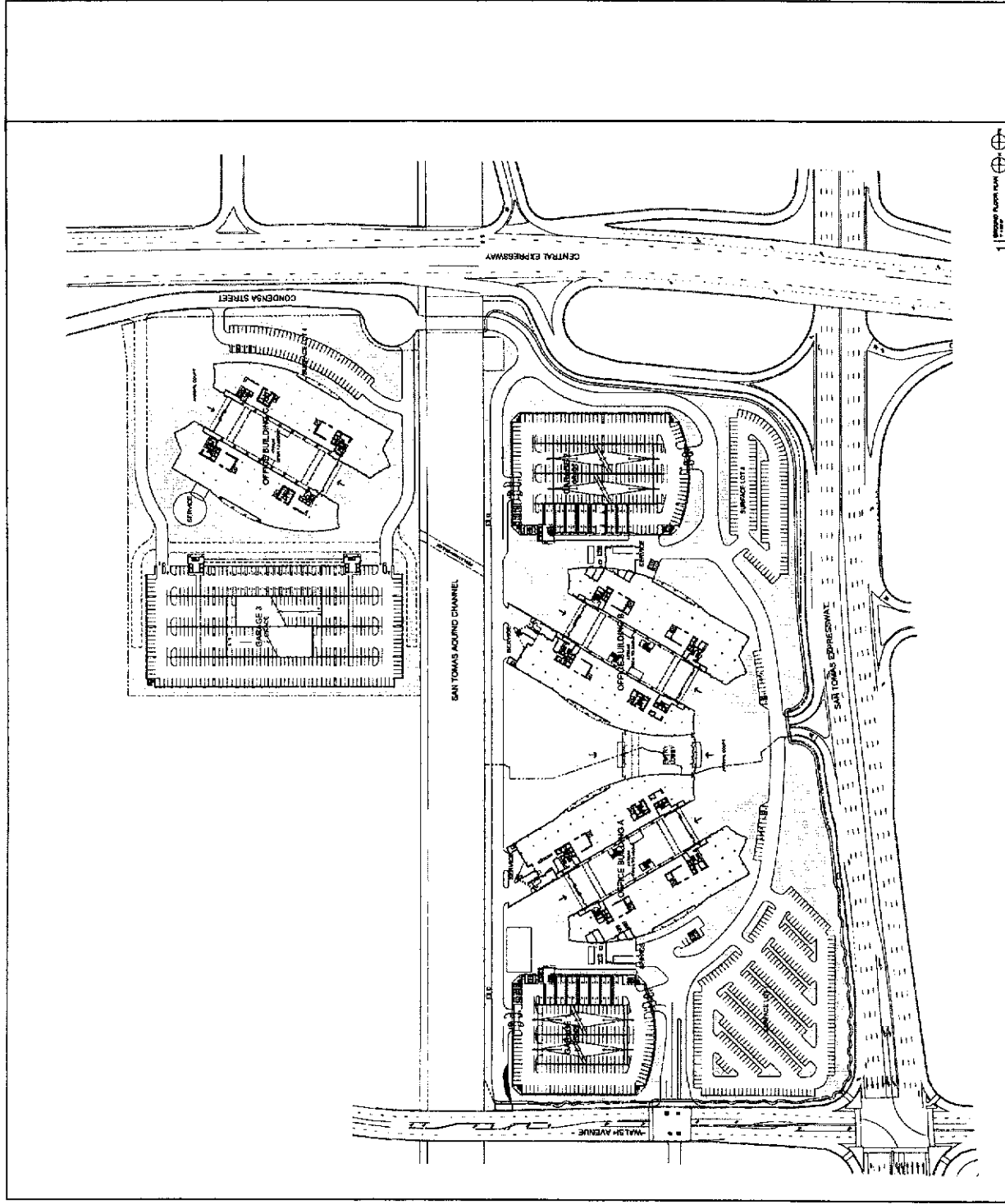
SAN TOMAS
BUSINESS PARK
CAMPUS

SEATTLE, WASH. DC

KORTH
BURNER
ARCHITECTS

1000 1st Avenue, Suite 1000
Seattle, WA 98101
Tel: 206.461.1000
Fax: 206.461.1001

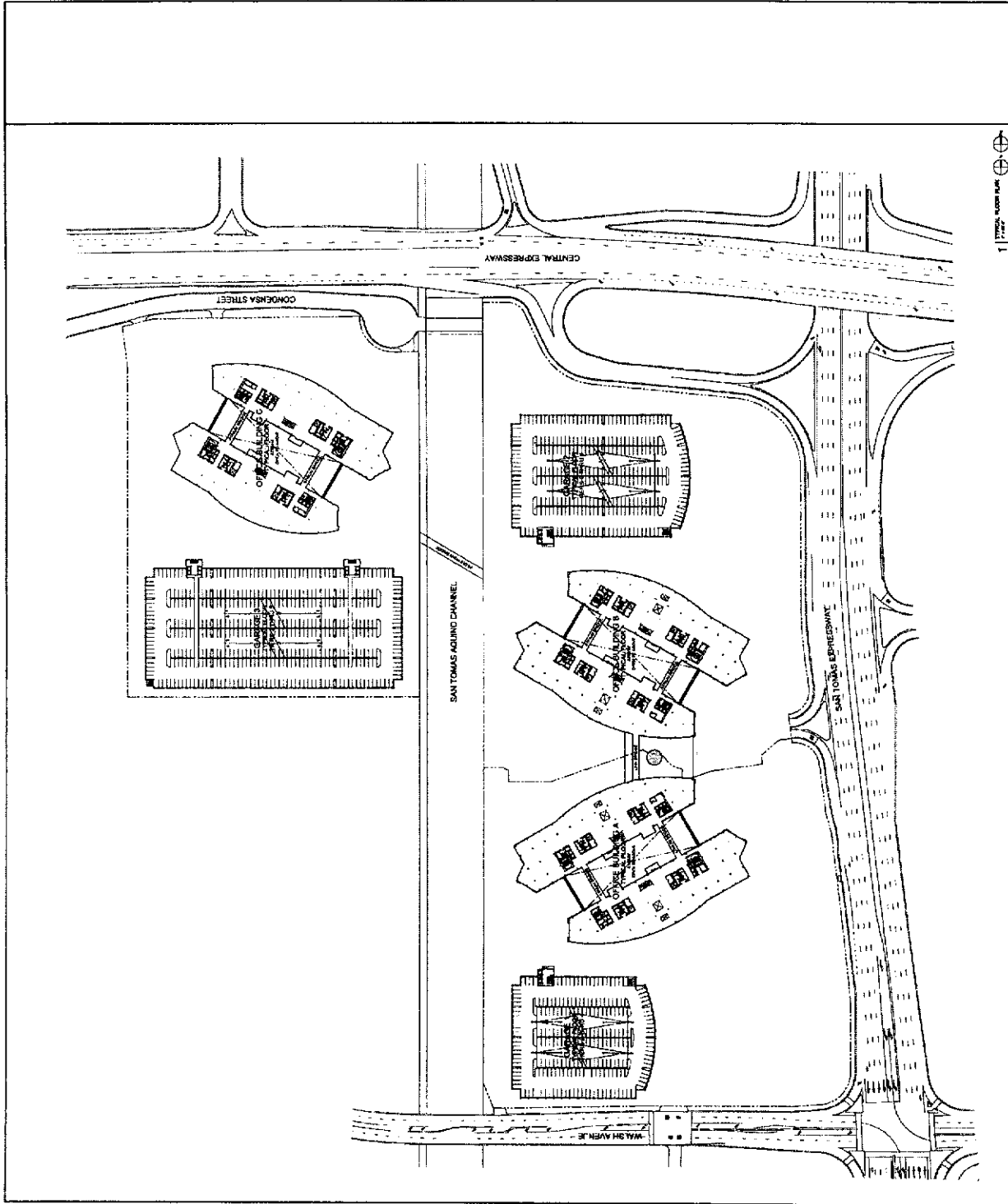
SCALE: 1" = 100'
FLOOR PLAN
GROUND FLOOR
SHEET 2 OF 8
NOVEMBER 18, 2000



SAN TOMAS
BUSINESS PARK
CAMPUS
SANTA CLARA, CA

NORTH
SUNBEAM
ARCHITECTS
ARCHITECTS
1000 AVENUE 84
SANTA CLARA, CA 95050
TEL: (408) 293-1234
FAX: (408) 293-1235
WWW.SUNBEAM-ARCHITECTS.COM

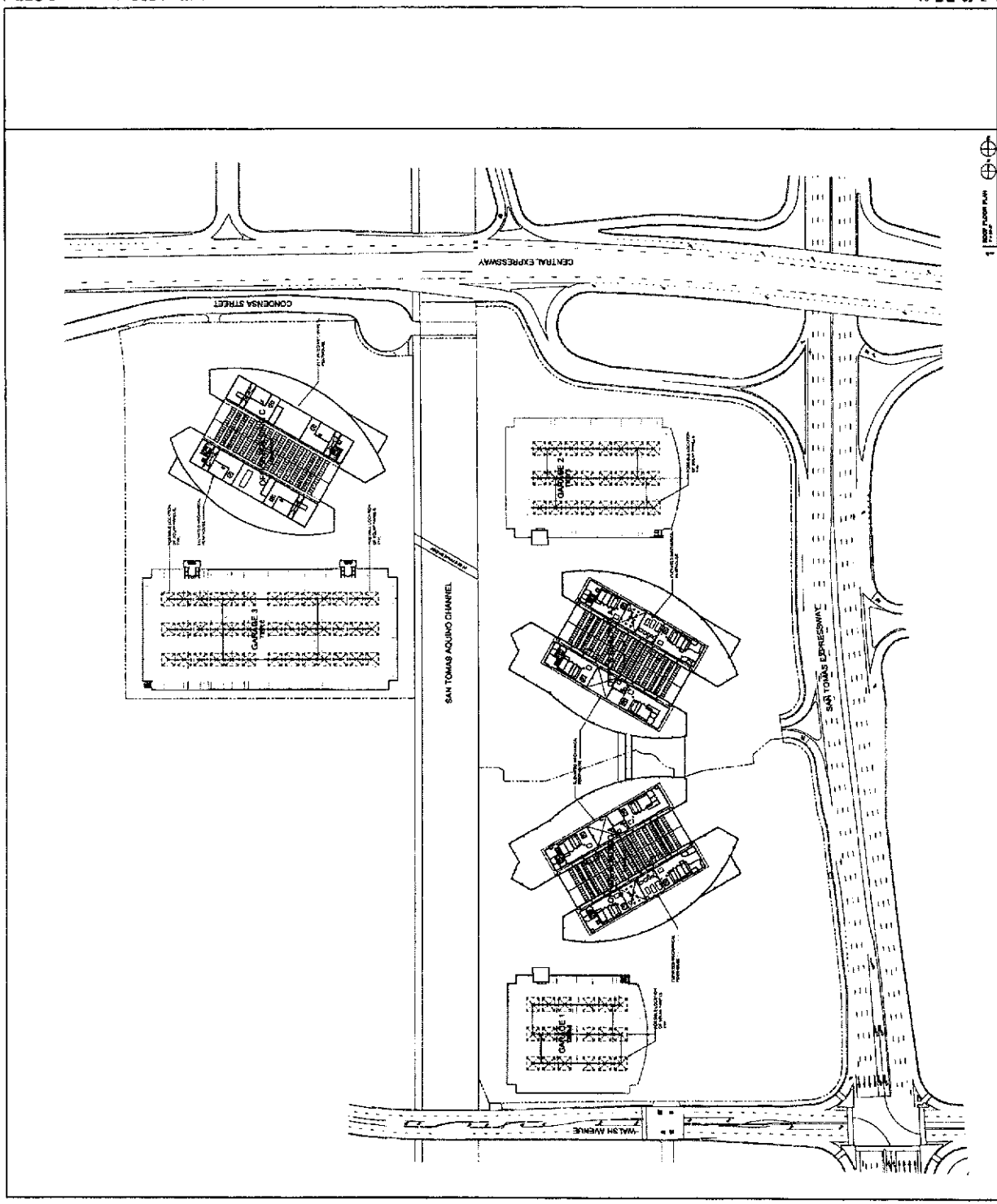
SCALE: 1/8" = 1'-0"
DATE: 11/01/03
SHEET 3 OF 6
NOVEMBER 01, 2003



SAN TOMAS
BUSINESS PARK
CAMPUS
SANTA CLARA, CA

NORTH
SUNSERI
ARCHITECTS
SAN FRANCISCO, CA
WWW.SUNSERIARCHITECTS.COM

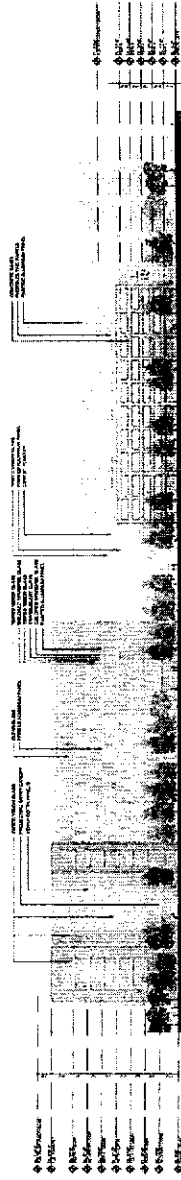
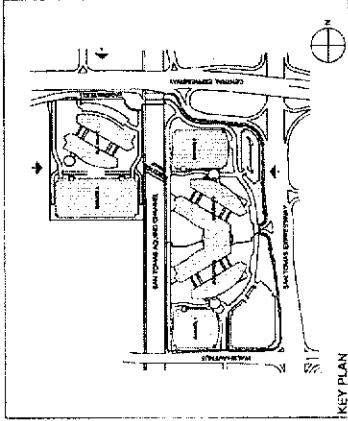
DATE: 11/15/09
FLOOR PLAN
ROOF LEVEL
SHEET 4 OF 8
NOVEMBER 06, 2009



SAN TOMAS
BUSINESS PARK
CAMBRIDGE
MASSACHUSETTS

KORTH
BARNES
HARRY
ARCHITECTS
1000 Massachusetts Avenue
Cambridge, MA 02142
Tel: 617.452.2200
Fax: 617.452.2201
www.korthbarnesharry.com

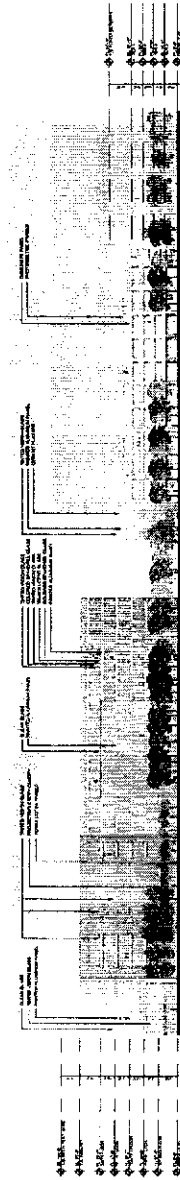
ENLARGED
SITE ELEVATIONS
SHEET 5 OF 6
NOVEMBER 08, 2008



1 | SAN TOMAS BUSINESS PARK - EAST ELEVATION



2 | SAN TOMAS BUSINESS PARK - WEST ELEVATION



3 | SAN TOMAS BUSINESS PARK - SOUTH ELEVATION

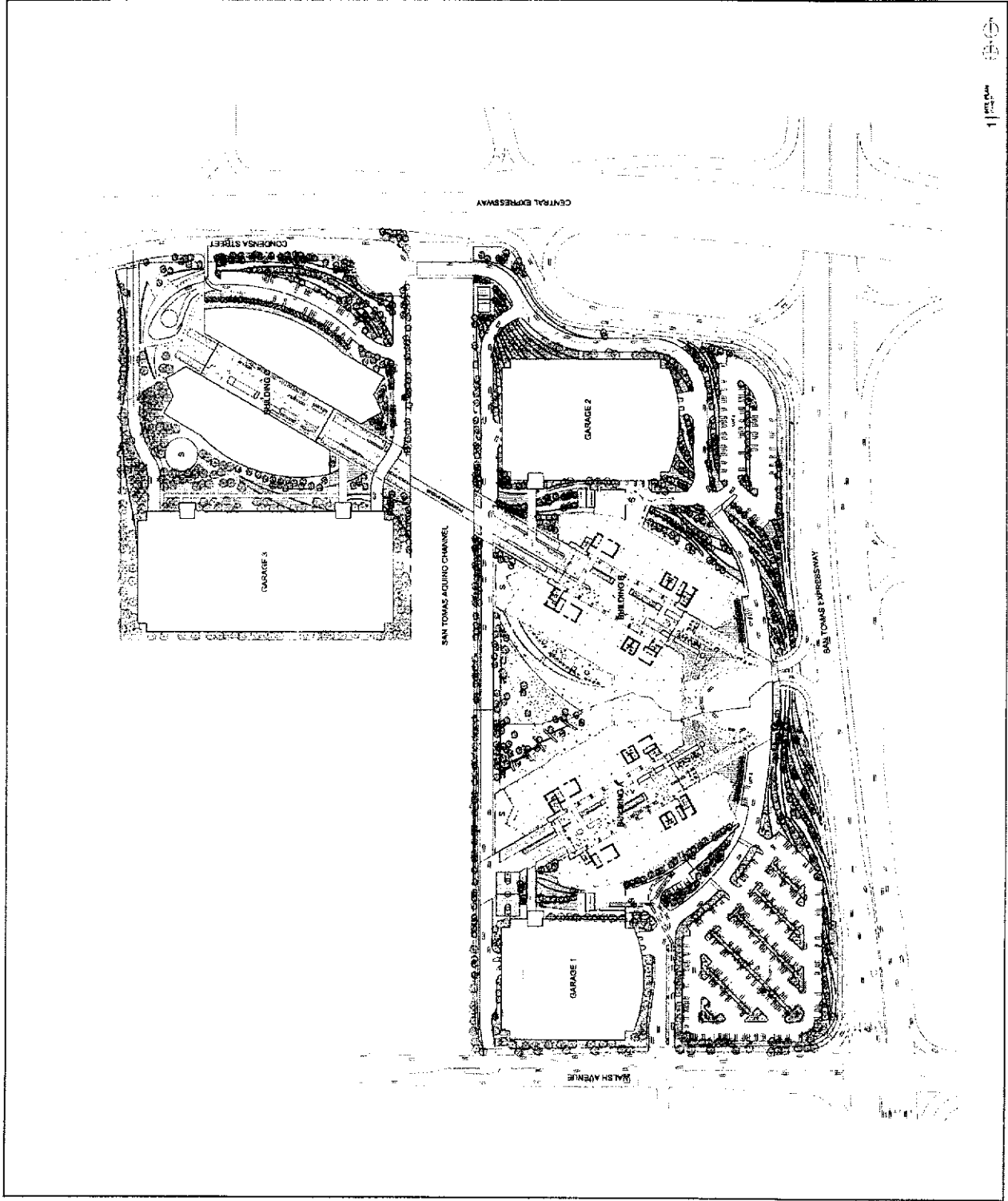


EXHIBIT C
CONDITIONS OF APPROVAL

CONDITIONS OF APPROVAL SAN TOMAS BUSINESS PARK CAMPUS PROJECT

GENERAL

- G1. Comply with all applicable codes, regulations, ordinances and resolutions.
- G2. If relocation of an existing public facility becomes necessary due to a conflict with the developer's new improvements, then the cost of said relocation shall be borne by the developer.

ATTORNEY'S OFFICE

- A1. Developer agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, attorneys' fees, injuries, costs, and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed by a third party against the City by reason of its approval of developer's project.

ENGINEERING DEPARTMENT

- E1. Damaged curb, gutter, and sidewalk within the public right-of-way along property's frontage shall be repaired or replaced (to the nearest score mark) in a manner acceptable to the City Engineer or his designee. The extents of said repair or replacement within the property frontage shall be at the discretion of the City Engineer or his designee.
- E2. Construct driveway(s) in the public right-of-way to City commercial driveway standard. Any proposed non-standard driveway will require approval of the City Engineer and the developer's execution of an agreement to maintain the driveway.
- E3. Unused driveways in the public right of way shall be replaced with City Standard curb, gutter, and sidewalk.
- E4. Visual obstructions over three feet in height will not be allowed within the driver's sight triangle near driveways and corners in order to allow an unobstructed view of oncoming traffic. Contact Traffic Engineering at (408) 615-3000 for further information.
- E5. All work within the public right-of-way, which is to be performed by the Developer/Owner, the general contractor, and all subcontractors shall be included within a Single Street Opening Permit issued by the City Engineering Department. Issuance of the Street Opening Permit and payment of all appropriate fees shall be completed prior to commencement of work, and all work under the permit shall be completed prior to issuance of occupancy permit.
- E6. The sanitary sewer (SS) discharge information (i.e., building use and square footage, and average and peak sanitary sewer flows) submitted by the developer was added to the City's Sanitary Sewer Capacity Model (SSCM) to determine if there is enough SS conveyance capacity to accommodate the proposed development. The SSCM output shows that there is slight surcharging in some downstream SS trunk lines. The SSCM output may change based on pending development applications and future projects. The SSCM output does not guarantee or in any way reserve or hold SS conveyance capacity until developer has final approval for the project.

- E7. The sanitary sewer (SS) mains serving the site not included in the Sanitary Sewer Capacity Model (SSCM) were monitored in the field by the developer. The field monitoring information along with the SS discharge information submitted by the developer were analyzed by developer's Civil Engineer and determined that said SS mains currently have enough conveyance capacity to accommodate the proposed increased development. The Civil Engineer's results may change based on pending development applications and future projects. The Civil Engineer's results do not guarantee or in any way reserve or hold SS conveyance capacity until developer has final approval for the project.
- E8. Obtain approval and permits from Santa Clara County for work within Central Expressway and San Tomas Expressway.
- E9. Developer to provide a complete storm drains study for the 10-year and 100-year storm events. The grading plans shall include the overland release for the 100-year storm event and any localized flooding areas. System improvements, if needed, will be at developer's expense.
- E10. Developer shall complete the relocation of utilities, prior to Council approval of a resolution ordering vacation of the portion of existing easement(s) proposed to be abandoned.
- E11. Prior to a Certificate of Occupancy for any buildings on a parcel with frontage on Central Expressway, the Developer is required to install public sidewalk connecting Condensa Street to San Tomas Expressway. The sidewalk would begin at the Condensa Street cul-de-sac and then follow the contours of the connector ramp between eastbound Central and southbound San Tomas Expressway along the northerly property line of the development. The sidewalk would continue along the west side of San Tomas to meet the existing sidewalk at the bus stop on San Tomas near Walsh. This involves significant amount of work, including possible removal of trees and/or relocation of the chain link fence between the property and the ramp. Any tree removal and chain link fence removal must obtain permission and permit from the County.
- The County's pedestrian plan for the expressways is being updated and reflects this extension of sidewalk connectivity. The sidewalk installation is also supported by the County Bike and Pedestrian Advisory Committee. Expanding pedestrian facilities on the expressways is a recognition of the fact that pedestrians do choose to walk or occasionally become forced to walk along the expressways and improved walking surfaces off the pavement enhances the safe operation for all.
- E12. Dedicate sidewalk easement for meandering sidewalk encroaching into private property.
- E13. Dedicate storm drain easement for the existing public 24" RCP located between the garage and Central Expressway.
- E14. Developer to dedicate an easement for pedestrian and bicycle use of the existing private bridge over the creek between the Condensa Street cul-de-sac and the east campus.
- E15. Developer shall work with the County regarding landscaping maintenance along the San Tomas and Central Expressways.
- E16. Obtain approval and permit from the Santa Clara Valley Water District for the proposed pedestrian bridge.

- E17. Developer to submit a Tentative Lot Line Adjustment to reconfigure the parcels for development.
- E18. The following traffic impact fees shall be collected along with the other standard development fees, prior to building permit issuance:
- a. Pay local traffic impact fee (\$1/sq. ft.) per City ordinance.
 - b. Pay regional traffic impact fee (\$1/sq. ft.).
 - c. Pay fair share costs to mitigate all impacts identified in the Traffic Impact Analysis, including project impacts and cumulative impacts.
- E19. Comply with mitigations listed in the Traffic Impact Analysis Report.

ELECTRIC DEPARTMENT

- EL1. Prior to submitting any project for Electric Department review, applicant shall provide a site plan showing all existing utilities, structures, easements and trees. Applicant shall also include a "Load Survey" form showing all current and proposed electric loads. A new customer with a load of 500KVA or greater or 100 residential units will have to fill out a "Service Investigation Form" and submit this form to the Electric Planning Department for review by the Electric Planning Engineer. Silicon Valley Power will do exact design of required substructures after plans are submitted for building permits.
- EL2. The Developer shall provide and install electric facilities per Santa Clara City Code chapter 17.15.210.
- EL3. Electric service shall be underground. See Electric Department Rules and Regulations for available services.
- EL4. Installation of underground facilities shall be in accordance with City of Santa Clara Electric Department standard UG-1000, latest version, and Santa Clara City Code chapter 17.15.050.
- EL5. Underground service entrance conduits and conductors shall be "privately" owned, maintained, and installed per City Building Inspection Division Codes. Electric meters and main disconnects shall be installed per Silicon Valley Power Standard MS-G6 and MS-G7.
- EL6. The developer shall grant to the City, without cost, all easements and/or right of way necessary for serving the property of the developer and for the installation of utilities (Santa Clara City Code chapter 17.15.110).
- EL7. All electric meters and services disconnects shall be grouped at one location, outside of the building or in a utility room accessible directly from the outside. A double hasp locking arrangement shall be provided on the main switchboard door(s). Utility room door(s) shall have a double hasp locking arrangement or a lock box shall be provided. Utility room door(s) shall not be alarmed.
- EL8. City Electric Department requires an area of 17' x 16'-2", which is clear of all utilities, trees, walls, etc. This area includes a 5'-0" area away from the actual transformer pad. This area in front of the transformer may be reduced from a 8'-0" apron to a 3'-0", providing the apron is back of a 5'-0" min. wide sidewalk. Transformer pad must be a minimum of 10'-0 from all doors and windows, and shall be located next to a level, drivable area that will support a large crane or truck.

- EL9. All trees, existing and proposed, shall be a minimum of five (5) feet from any existing or proposed Electric Department facilities. Existing trees in conflict will have to be removed. Trees shall not be planted in PUE's or electric easements.
- EL10. Any relocation of existing electric facilities shall be at Developer's expense.
- EL11. Electric Load Increase fees may be applicable.
- EL12. The developer shall provide the City, in accordance with current City standards and specifications, all trenching, backfill, resurfacing, landscaping, conduit, junction boxes, vaults, street light foundations, equipment pads and subsurface housings required for power distribution, street lighting, and signal communication systems, as required by the City in the development of frontage and on-site property. Upon completion of improvements satisfactory to the City, the City shall accept the work. Developer shall further install at his cost the service facilities, consisting of service wires, cables, conductors, and associated equipment necessary to connect a customer to the electrical supply system of and by the City. After completion of the facilities installed by developer, the City shall furnish and install all cable, switches, street lighting poles, luminaries, transformers, meters, and other equipment that it deems necessary for the betterment of the system (Santa Clara City Code chapter 17.15.210 (2)).
- EL13. Electrical improvements (including underground electrical conduits on properties frontage) may be required if any private single improvement valued at \$50,000 or more or any series of private improvements are made within a three-year period valued at \$50,000 or more in conjunction with a use, variance, or moving permit. Electrical improvements may also be required if any single private improvement valued at \$80,000 or more or any series of private improvements made within a three-year period valued at \$80,000 or more in conjunction with a building permit (Santa Clara City Code Title 17 Appendix A (Table III)).
- EL14. Non-Utility Generator equipment shall not operate in parallel with the electric utility, unless approved and reviewed by the Electric Engineering Division. All switching operations shall be "Open-Transition-Mode", unless specifically authorized by SVP Electric Engineering Division. A Generating Facility Interconnection Application must be submitted with building permit plans. Review process may take several months depending on size and type of generator. No interconnection of a generation facility with SVP is allowed without written authorization from SVP Electric Engineering Division.
- EL15. Applicant is advised to contact SVP (CSC Electric Department) to obtain specific design and utility requirements that are required for building permit review/approval submittal. Please provide a site plan to Leonard Buttitta at 408-261-5469 after development of site plan, to facilitate plan review.

WATER DEPARTMENT

- W1. Subject to the approval of the Director of Water and Sewer Utilities, and providing there is no depressed-grade parking, water needs may be served by an on-site water distribution system and individual meters installed and maintained by City in an easement (minimum width 15 feet) granted for that purpose. Developer shall contact the Water Department for the water infrastructure design criteria prior to designing the on-site utilities. Developer must secure Water Department's approval of the on site public water infrastructure design before Building Department issues a grading permit for the project.
- W2. It shall be the responsibility of the owner/developer to determine if there are any water wells on the property. Unless the continued use of such well or wells is specifically permitted under City Code, and such well or wells can be demonstrated to meet all

applicable sanitary standards and absent of contamination, the well or wells shall be sealed in accordance with the Standards promulgated by Santa Clara Valley Water District. A copy of the Destruction Permit issued by District, indicating that the well or wells have been properly sealed, shall be submitted to City as evidence thereof.

- W3. Install an approved sanitary sewer grease interceptor on the sanitary discharge line to the satisfaction of the San Jose/Santa Clara Water Pollution Control Plant, Industrial Waste Division. The developer shall submit a letter from said division to verify compliance, prior to issuance of the occupancy permit. Developer must also secure arrangement to periodically have the grease removed and properly disposed of. Sewer rates will vary with type of discharge and sewer charges are a function of water use.
- W4. All landscaping and irrigation systems shall meet water conservation requirements as per City's Rules and Regulations for Water Service (Resolution 6390).
- W5. Developer is advised that building height may require pumping to maintain adequate pressure for fire and domestic water.
- W6. Backflow prevention is required on any required fire service connection at the developer's expense.
- W7. Water and sewer service shall be independent, that is, the said property shall not be connected to lines from the adjacent properties unless approved by the City Building Official.
- W8. All sanitary sewer lateral(s), either proposed or existing, shall be equipped with a clean-out at the property line.
- W9. Decorative water features such as fountains and ponds shall be designed and constructed to include provisions for operating the system without City potable water supply. All decorative water features shall be capable of being physically disconnected from source of potable water supply during City declared water conservation periods.
- W10. Landscaping irrigation water needs shall be provided by a separate water service(s).
- W11. The California Regional Water Quality Control Board has ordered that a maximum limit be imposed on the amount of treated wastewater, which can be discharged to South San Francisco Bay by the San Jose/Santa Clara Water Pollution Control Plant ("Plant"). Issuance of a building permit to implement this land use development approval may be delayed if the City has reached its' remaining allocated discharge capacity in the Plant prior to issuance of the building permit.
- W12. Developer is advised that adequate plumbing must be designed and installed for the proposed development and the affected building, or reduced residual water pressure may be experienced due to added water demand.
- W13. All trees, existing and proposed, must maintain minimum of ten (10) feet from any existing or proposed Water and Sewer Department facilities. If a City-approved Tree Root Barrier (TRB) is used, the TRB must be a minimum of 5' from existing and proposed Water and Sewer Department facilities, with the tree behind the TRB. Existing trees that conflict must be removed by developer. Trees shall not be planted in water or public utility easements.
- W14. Any relocation of existing Water Department facilities shall be at Developer's expense.

- W15. Due to the density or restrictive nature of the proposed site (development) a more detailed 'composite' utility and tree layout plan is required to be submitted, showing water, sanitary sewer and storm sewer mains and joint trench locations (including any other potential utility that may be required but not listed). This plan also needs to show building footprints, driveways, walkways, water services, sanitary sewer laterals, catch basin laterals, storm laterals to individual units if required, electric meter locations at the individual units and trees. Trees are required to be 10' from public water and sewer facilities unless a City approved Tree Root Barrier (TRB) is used. If a City approved TRB is used the TRB must be a minimum of 5' from the public water and sewer facility with the tree behind the TRB. If TRB's are going to be used it must be noted on the plan.

If the required clearances cannot be provided, the Water Department may provide a separate master meter and fire service at the property frontage and all on-site water facilities shall be private.

If the required clearances meet the Water Department's minimum standards and the development goes forward, the developer must submit a separate set of 'Public Water System Improvement Plans' that is to be prepared per Water Department standards for City's review and approval. After construction is complete, As-Built reproducible mylars must be provided to the Water Department for permanent records.

- W16. Landscape irrigation water needs shall be provided by separate water service(s). Irrigation system shall be designed and constructed in compliance with City's Rules and Regulations for recycled water use. Until such time as recycled water service is available, the scope of irrigation system will be limited to installation of purple pipe, but not valves, controls, and associated items for recycled water operation.

FIRE DEPARTMENT

- FD1. Private fire hydrants and mains capable of supplying the required fire flow shall be installed when any portion of the building protected is in excess of 150 feet from a water supply, as measured by an approved route around the exterior of the facility or building. On-site fire hydrants and mains capable of supplying the required fire flow shall be provided. Fire flow for hydrants shall be in accordance with Table III-A: The number and spacing of onsite fire hydrants shall be in accordance with the 2007 CFC.

- FD2. Fire protection facilities for high-rise buildings shall not be served by dead end water mains, but rather a looped service with two separate feeds.

- FD3. Provide a secondary source of water supply for each High-Rise building for duration of 30 minutes, for the demand of the system. All High-Rise structures require a separate secondary source of water supply in accordance with the 2007 CBC and CFC.

Fire Department Emergency Access:

- FD4. Approved fire apparatus access roads shall have a minimum 20-foot width, have a minimum 13 ½-foot vertical clearances and have a minimum 36-foot inside turning radius.

- FD5. Dead-end fire apparatus access roads that exceed 150-feet in length shall be provided with a 75-foot diameter vehicle turnaround or an approved hammerhead turnaround (incorporating the minimum 36-foot inside turning radius). (Utilizing the turf block roadway may be acceptable if meeting this requirement.)

- FD6. Approved fire apparatus access roads (public/private) shall be established and maintained to within 150 feet of all exterior walls of any building as indicated.

- Submit Alternate materials and method application for horizontal standpipes in lieu of access.
- FD7. Adjacent private emergency access roads from lands adjoining a property required to have access shall not be considered unless such access is designated as a "shared Emergency Access Easement" (E.A.E.). Note: When parcels are subdivided, E.A.E. will most likely be required.
- FD8. Occupancy Classifications: State the occupancy classification in accordance with the California Building Code for each building or areas.
- FD9. Floor openings: Submit alternate methods and materials application for floor openings higher than permitted.

Water Supply:

- FD10. When underground fire service mains are required, submit separate plans, fees and fire flow calculations to the Fire Department for separate review and permit. Each parcel or building may require separate fire service. (NOTE: Stamped and wet signed Civil drawings shall be submitted in conjunction with shop quality drawings by the installing "A" or "C-16" licensed contractor).
- FD11. Any development providing any combination of six (6) or more fire hydrants, fire sprinkler or standpipe services, shall not be served by a dead end water main, but rather served by a looped service with two separate feeds containing Fire Department Connections (FDCs), post indicator valves (PIVs) and private fire hydrants. The FDC and PIV shall be located on the street fronting each building. The FDC shall not supplement/charge/pressurize the private fire service main, but only the building's sprinkler/standpipe/wharf hydrant system it serves. The FDC shall be located within 50 feet of a fire hydrant, plus on the same side of the road as the fire hydrant(s). FDC's shall not be required for the private fire service and private fire hydrants.
- FD12. In private underground piping systems, any dead end pipe, which supplies both sprinkler and hydrants, shall be not less than eight (8) inches in diameter.

Required Fire Protections/ Detection Systems and Equipment:

- FD13. An automatic fire sprinkler system is required for all new buildings exceeding 3,600 square feet. Sprinkler main drain test valves shall discharge to the sanitary sewer system (via an indirect connection) or shall discharge onto a landscape area of sufficient size.)
- FD14. Standpipe system shall be provided for any building four or more stories in height.
- FD15. A fire alarm system shall be provided in accordance with the 2007 California Fire Code and Building Code for smoke detection, emergency voice communication with manual override and live voice messages.
- FD16. High-Rise Buildings: Smoke control system is required for all High-Rise buildings.
- FD17. High-Rise Buildings: Provide Fire Department Communication system in accordance with the CBC.
- FD18. High-Rise Buildings: Provide a Fire Command Center for High-Rise buildings.

FD19. High-Rise Buildings: Standby power is required for HR building. Where a generator is provided inside the building, the room housing the generator/ tanks shall be in a 2-hour fire barrier.

FD20. Provide an emergency communication system acceptable to the fire code official.

Fire Safety During Construction:

FD21. At the time of permit application, submit a construction "Fire Safety Plan" to the Fire Department for review and approval. The "Fire Safety Plan" shall address fire protection (i.e., access roads, water mains, on-site fire hydrants, fire extinguishers and standpipes) be installed and made serviceable prior to the time of construction. Include in the safety plan the location of fire extinguishers, fire hydrants (public and private), storage of combustible construction materials, propane tanks, and "NO SMOKING" signs. Plus the Safety plan shall address the how the following items will be used: temporary heating devices, temporary electrical wiring, cutting/welding and other open-flame devices. (CFC 8703; 901.3; 903.2 & 8700). See "Standards for Construction site fire Safety" handout or website at www.unidocs.org/fire.

Fire Department Notes (Required on plans/ drawings at the time of application)

FD22. At the time of Building Permit application, submit Civil Drawings that denote existing and proposed locations of fire hydrants, underground sectional valves, fire department connections and post indicator valves for fire department review and approval.

FD23. Prior to combustible materials being brought onto the site, approved fire apparatus access roads shall be constructed. These shall be capable of supporting the imposed fire apparatus load (70,000 lbs.) and have a Fire Department approved all-weather driving surface.

FD24. Construction materials shall not obstruct access roads, access to buildings, hydrants or fire appliances.

FD25. Combustible construction in excess of 100 feet from the street shall not commence until emergency access roads; underground fire service lines and permanent on-site hydrants are in service and have been tested, flushed and approved by the Fire Department.

FD26. During construction of a building and until permanent fire-extinguishers have been installed, portable fire extinguishers are required within 50 feet travel distance to any part of the building in accordance with section 8704.4.2 of the 2001 California Fire Code and the Santa Clara Municipal Fire and Environmental Code.

FD27. General Permit through the State shall be adhered to regarding non-point source issues on construction sites. (i.e., prevention of paints, debris, etc. from going down storm drains).

FD28. Internal-combustion-powered construction equipment shall be used as follows; (a) Equipment shall not be refueled while in operation, (b) Exhausts shall be piped to the outside of the building.

POLICE DEPARTMENT

PD1. Provide a minimum illumination of one-foot candle in carport, parking areas and in all common pedestrian or landscaped areas of the development, subject to adjustments by the Police Chief in consultation with Silicon Valley Power and Planning Department as necessary for the project to meet LEED Certification objectives. The illumination should be deployed in fixtures that are both weather and vandal resistant.

- PD2. A Knox Box or Coded Entry System is required for Police access to enclosed parking lots and gated communities.
- PD3. Landscaping shall be of the type and situated in locations to maximize visibility from the street while providing the desired degree of aesthetics. Security planting materials are encouraged along fence and property lines and under vulnerable windows.
- PD4. Address numbers should be a minimum of twelve (12) inches in height for commercial or industrial buildings. The numbers shall be illuminated during hours of darkness, and in a color that is contrasting to the background material. They shall be clearly visible from the street. Where multiple business units or buildings occupy the same property, each unit/building address shall be clearly visible. A monument sign, preferably at all entrances to the property, shall be prominently displayed showing all unit/building numbers, addresses, etc. A map is recommended for large complexes with multiple streets or walkways.
- PD5. The Developer shall meet the City's guidelines established for radio signal penetration, detailed in the Communications Department's Public Safety Radio System Building Penetration Guidelines. The intended use of telecommunications sites shall be clearly and accurately stated in the use permit. The signal, of whatever nature, of any communications facility or system, shall in no way whatsoever interfere with or affect any Police communication or Police communication system.
- PD6. For each individual address (unit, suite, etc.) phone company records (specifically "911" dispatch) shall reflect the actual address the phone is located at.
- PD7. Any required enclosure fencing (trash area, utility equipment, etc.) if not see through, should have a six (6) inches opening along the bottom for clear visibility. Any gates or access doors to these enclosures should be locked.
- PD8. Exterior stairs should be open style and well lit.
- PD9. Exterior elevators should be see through for maximum visibility. All elevators should be well lit and equipped with a security mirror to provide interior and exterior visibility prior to entry or exit.
- PD10. In a development where there is an alley, driveway, etc. providing a rear entrance or access, the address shall be displayed to both the front and rear of the individual buildings. Where an alley, driveway, etc. provides vehicular access, address numbers shall be clearly visible from that access.
- PD11. All business or commercial establishments, of whatever nature, should have a comprehensive internal security plan, tailored to the specific use. This should include, but not be limited to, employee security during working hours, after hours security, disaster preparation, etc. For retail uses, especially where cash is on hand, robbery and cash security protocols should be established. Applicants are encouraged to contact the Santa Clara Police Community Services Unit at (408) 615-4859 for assistance.
- PD12. Public Safety Radio Systems Guidelines have been established by the City Of Santa Clara Communications Department for radio signal penetration during emergencies. The developer is advised that the project may be required to install equipment for adequate radio coverage for the City Of Santa Clara Radio Communications System, including but not limited to Police & Fire emergency services. The developer should contact the Director of Communications at (408) 615-5571.

- PD13. There shall be positioned near the entrance an illustrative diagram of the complex, which shows the location of the viewer and unit designations within the complex including separate building designations. This diagram shall be illuminated and should be protected by vandal resistant covers.
- PD14. The parking structure, including ramps, corners and entrances, should be illuminated at a minimum of 5-foot candles at all hours, subject to adjustments by the Police Chief in consultation with Silicon Valley Power and Planning Department as necessary for the project to meet LEED Certification objectives.
- PD15. The parking structure/site should be equipped with an emergency panic alarm system that reports to a central office. If more than one button is installed, they should be placed no more than 100 ft. apart.
- PD16. The parking structure/site should be equipped with emergency telephones.
- PD17. All entrances to parking areas (surface, structure, sub-terranean, etc.) should be posted with appropriate signage to discourage trespassing, unauthorized parking, etc. (See California Vehicle Code Section 22658(a) for guidance).
- PD18. All exterior doors should be adequately illuminated at all hours with their own light source.
- PD19. The 'Parking Structure & Parking Lot Security' recommendations provided to applicant should be considered, with applicable provisions implemented.
- PD20. All business or commercial establishments, of whatever nature, should have an electronic intruder alarm system installed. The system should cover the interior and perimeter of structures determined to be a value target. Also, consideration should be given to exterior areas that are or contain value targets, such as a product display lot, company vehicle parking area, etc.
- PD21. When there is an alley or driveway to the rear of a business or commercial establishment that provides pedestrian or vehicle access, that area should be fenced and locked after hours. A "Knox Box" or similar system should be used for Police and Fire emergency access.

STREET DEPARTMENT

- ST1. Submit copy of complete landscape and automatic irrigation plans for review and comment by City staff. Plans are to include all existing trees with 4" or larger diameter (measured 30" above ground) on development property and adjacent property if they may be impacted. Trees are to be correctly labeled with specie name and correctly plotted as to exact location on the plans. Trees are to be noted as to whether they are proposed to be saved or removed. City tree preservation specifications are to be included on all plans where existing trees are to be saved during construction. A copy of these specifications can be obtained from the City Arborist at 408-615-3080.
- ST2. The Developer is to supply and install City street trees per City specifications; spacing, specie, and size (15 gallon minimum) to be determined by City Arborist.
- ST3. No cutting of any part of City trees, including roots, shall be done without following city tree preservation specifications and securing approval and direct supervision from the City Arborist at 408-615-3080.

- ST4. No cutting of any part of private trees, as identified to remain on the tree preservation plan, including roots, shall be done without direct supervision of a certified arborist (Certification of International Society of Arboriculture).
- ST5. Applicant is advised to contact Street Department to obtain required tree removal permits in the event trees are removed. Please contact John Mendoza at 408-615-3080 to facilitate plan review.
- ST6. Identified existing mature trees to be maintained. Prepare a tree protection plan for review and approval by the City prior to any demolition, grading or other earthwork in the vicinity of existing trees on the site. Provide 48-inch box trees for screening adjacent to the existing residential properties, type to be determined by City Arborist.
- ST7. Landscaping shall be of the type and situated in locations to maximize visibility from the street while providing the desired degree of aesthetics. Security planting materials are encouraged along fence and property lines and under vulnerable windows.
- ST8. All trees, existing and proposed, must maintain minimum of ten (10) feet from any existing or proposed Water Department facilities. Existing trees that conflict must be removed by developer. Trees shall not be planted in water easements or public utility easements.
- ST9. Prior to submitting any project for Street Department review, applicant shall provide a site plan showing all existing trees (including size and species), proposed trees (including size and species), existing stormwater drainage facilities, proposed storm water drainage facilities, proposed locations of solid waste containers and, if applicable, a statement on the site plan confirming compliance with Fire Department approved fire apparatus access roads (1998 CFC 902.2.2.1 & 902.2.2.3).
- ST10. All landscaping and irrigation systems shall meet City standard specifications.
- ST11. Provide the Street Department with information regarding existing tree information and/or how trees are to be preserved. Applicant to coordinate with John Mendoza of the Street Department at 408-615-3080 prior to re-submittal.
- ST12. Obtain required permits and inspections from the Building Official and comply with the conditions thereof. If this project involves land area of 15,000 sq. ft. or more, the developer shall file a Notice of Intent (NOI) with the State Water Resources Control Board prior to issuance of any building permit for grading, or construction; a copy of the NOI shall be sent to the City Building Inspection Division. A storm water pollution prevention plan is also required with the NOI.
- ST13. Incorporate Best Management Practices (BMPs) into construction plans and incorporate post construction water runoff measures into project plans in accordance with the City's Urban Runoff Pollution Prevention Program standards prior to the issuance of permits. Proposed BMPs shall be submitted to and thereafter reviewed and approved by the Planning Division and the Building Inspection Division for incorporation into construction drawings and specifications.
- ST14. An erosion control plan shall be prepared and copies provided to the Planning Division and to the Building Inspection Division for review and approval prior to the issuance of grading permits or building permits that involve substantial disturbance of substantial ground area.

- ST15. All proposed storm water treatment vaults shall have a hydrodynamic separator upstream of their installation.
- ST16. All proposed stormwater treatment vaults shall have internal treated distribution plumbing. No external folding racks are permitted.
- ST17. All post construction structural controls shall require property owner to execute with City a Stormwater Treatment Measures Inspection and Maintenance Agreement.
- ST18. Decorative water features such as fountains and ponds shall be designed and constructed to drain to sanitary sewer only. No discharges allowed to storm drain.
- ST19. Special Urban Runoff Stormwater Pollution Prevention requirements apply. Set up meeting with the Street Department to discuss requirements. Contact Street Department at 408-615-3080.
- ST20. Provide the Street Department with information to evaluate proposed stormwater pollution prevention improvements. Applicant to coordinate with Dave Staub of the Street Department at 408-615-3080 prior to re-submittal.
- ST21. Applicant to comply with City Development Guidelines for Solid Waste Services as specified by development type.
- ST22. Provide trash enclosure, the location and design of which shall be approved by the Director of Planning and Inspection prior to issuance of any building permits.
- ST23. Commercial, industrial, and multi-family residential buildings must have enclosures for solid waste and recycling containers. The size and shape of the enclosure(s) must be adequate to serve the estimated solid waste and recycling needs and size of the structure, and should be designed and located on the property so as to allow ease of access by collection vehicles. As a general rule, the size of the enclosure(s) for the recycling containers should be similar to the size of the trash enclosure(s) provided onsite. Roofed enclosures with masonry walls and solid gates are the preferred design.
- ST24. The applicant shall provide a site plan showing all proposed locations of solid waste containers, enclosure locations and street/alley widths to the Street Department.
- ST25. The application shall provide the Street Department with information to evaluate Solid Waste requirements. Set up meeting with Dave Staub of the Street Department at 408-615-3080 to discuss the requirements.
- ST26. Applicant to comply with City Code Section 8.25.285 and recycle or divert at least fifty percent (50%) of materials generated for discards by the project during demolition and construction activities. No building, demolition or site development permit shall be issued unless and until applicant has submitted a construction and demolition debris materials check-off list. After completion of project, applicant shall submit a construction and demolition debris recycling report as stipulated by ordinance, or be subject to monetary, civil, and/or criminal penalties.

PLANNING AND BUILDING INSPECTION

- P1. Obtain required permits and inspections from the Building Official and comply with the conditions thereof. If this project involves land area of 1 acre or more, the developer shall file a Notice of Intent (NOI) with the State Water Resources Control Board prior to issuance of any building permit for grading, or construction; a copy of the NOI shall be

sent to the City Building Inspection Division. A storm water pollution prevention plan is also required with the NOI.

- P2. Submit plans for final architectural review to the Planning Division and obtain architectural approval prior to issuance of building permits. Said plans to include, but not be limited to: site plans, floor plans, elevations, landscaping, lighting and signage. Landscaping installation shall meet City water conservation criteria in a manner acceptable to the Director of Planning and Inspection.
- P3. Identified existing mature trees to be maintained. Prepare a tree protection plan for review and approval by the City prior to any demolition, grading or other earthwork in the vicinity of existing trees on the site.
- P4. Construction activity shall be limited to the hours of 7:00 a.m. to 6:00 p.m. weekdays and 9:00 a.m. to 6:00 p.m. Saturdays for projects within 300 feet of a residential use and shall not be allowed on recognized State and Federal holidays.
- P5. Prior to issuance of a demolition permit, Developer/Owner shall have an asbestos survey of the proposed site performed by a certified individual. Survey results and notice of the proposed demolition are to be sent to the Bay Area Air Quality Management District (BAAQMD). No demolition shall be performed without a demolition permit and BAAQMD approval and, if necessary, proper asbestos removal.
- P6. Incorporate Best Management Practices (BMPs) into construction plans and incorporate post construction water runoff measures into project plans in accordance with the City's Urban Runoff Pollution Prevention Program standards prior to the issuance of permits. Proposed BMPs shall be submitted to and thereafter reviewed and approved by the Planning Division and the Building Inspection Division for incorporation into construction drawings and specifications.
- P7. The project site is located in Seismic Hazard Zone as identified by the State Geologist for potential hazards associated with liquefaction, pursuant to the Seismic Hazard Mapping Act (Div.2 Ch7.8 PRC), and the developer shall prepare and submit a geotechnical hazards investigation report acceptable to the City of Santa Clara Building Official prior to issuance of permits.
- P8. An erosion control plan shall be prepared and copies provided to the Planning Division and to the Building Inspection Division for review and approval prior to the issuance of grading permits or building permits that involve substantial disturbance of substantial ground area.
- P9. Commercial, industrial, and multi-family residential buildings must have enclosures for solid waste and recycling containers. The size and shape of the enclosure(s) must be adequate to serve the estimated solid waste and recycling needs and size of the building(s) onsite, and should be designed and located on the property so as to allow ease of access by collection vehicles. As a general rule, the size of the enclosure(s) for the recycling containers should be similar to the size of the trash enclosure(s) provided onsite. Roofed enclosures with masonry walls and solid metal gates are the preferred design.

Any required enclosure fencing (trash area, utility equipment, etc.) if not see-thru, shall have a six (6) inch opening along the bottom for clear visibility. Any gates or access doors to these enclosures shall be locked.

- P10. The Water Resource Protection Collaborative has developed and agreed upon a set of Guidelines and Standards for Land Use Near Streams (G&S's). The G&S's are intended to establish clear, consistent, countywide guidance for local agency land use planning and permitting related to protecting and enhancing streams, streamside resources and water quality. The G&S's include both basic guidelines and standards as well as a set of Enhanced Practices designed to encourage local jurisdictions and property owners to implement additional protective measures. The G&S's is a manual of Best Practices for protecting streams and riparian areas.
- P11. Santa Clara Valley Water District (SCVWD) is a responsible and permitting agency due to the proximity of development adjacent to San Tomas Aquino Creek Channel, and for the proposed pedestrian bridge across SCVWD right-of-way.
- P12. Design of the proposed campus should take into consideration that the San Tomas Aquino/Saratoga Creek Trail traverses through the project site.
- P13. C3 measures to be incorporated into grading and site design. Identify C3 measures and provide C3 calculations. A Maintenance Agreement for post-construction maintenance of C3 devices/measures shall be required. Complete the City of Santa Clara Stormwater Requirements Applicant Packet.
- P14. Provide landscape plan. Landscape plan to include type and size of proposed trees. Type and location of street trees to be reviewed and approved by City Arborist. A complete landscape plan that includes, type size and location of all plant species shall be required as part of architectural review of the project. Review and approval of the complete landscape plan, including water conservation calculations and irrigation plan shall be required prior to issuance of occupancy permits.
- P15. Submit utility plan. Utility plan to include landscape overlay to verify that there are not conflicts with location of utilities and trees. Minimum separation distances of trees from water/sewer/storm utilities is 5' with root barriers (10' without root barriers) and 5' from electrical utilities.
- P16. Due to the density or restrictive nature of the proposed site (development) a more detailed 'composite' utility and tree layout plan is required to be submitted, showing water, sanitary sewer and storm sewer mains and joint trench locations (including any other potential utility that may be required but not listed). The plan needs to show building footprints, driveways, walkways, water services, sanitary sewer laterals, catch basin laterals, storm laterals to individual units if required, electric meter locations at the individual units and trees. Trees are required to be 10' from public water and sewer facilities unless a City approved Tree Root Barrier (TRB) is used. If a City approved TRB is used the TRB must be a minimum of 5' from the public water and sewer facility with the tree behind the TRB. If TRB's are going to be used it must be noted on the plan.
- P17. The Planning Division may require the replanting of specific trees as a condition of approval. The Santa Clara Community Design Guidelines specify the following minimum planting tree sizes for trees required as a condition of approval:
- Minimum fifteen (15) gallon street tree.
 - Minimum fifteen (15) gallon on private property.
 - Minimum twenty (24) or thirty-six (36) inch box to replace a mature tree which has been or is proposed to be removed.
- P18. The Developer shall submit to the Planning Division all draft covenant, joint-maintenance, and/or shared-access agreements, for review and approval. Such agreements shall ensure consistent maintenance of all landscaped areas and shared

access between adjacent parcels.

- P19. The Developer shall provide the Planning Division with fully colored elevations of all proposed design changes, and photo-simulated renderings of the completed conceptual design.
- P20. The project shall comply with the Mitigation Monitoring and Reporting Program identified in the Environmental Impact Report for the San Tomas Business Park Campus Project.
- P21. The project shall comply with the conditions set forth in the Development Agreement between the City of Santa Clara and Harvest 2400, LLC, a California Limited Liability Corporation for the San Tomas Business Park Campus Project.
- P22. The Developer, for Regional Traffic Fee, shall pay the sum of one dollar (\$1.00) per square foot of building payable to the City at the issuance of Building Permits for that square footage. These Traffic Fees are non-refundable.
- P23. The Developer, for Local Traffic Fee, shall pay the sum of one dollar (\$1.00) per square foot of building payable to the City at the issuance of Building Permits for that square footage. These Traffic Fees are non-refundable.
- P24. The Developer shall post a bond or letter of credit upon execution of the Development Agreement in the sum of four million nine hundred fifty-three thousand and nine hundred sixty-four dollars (\$4,953,964.00) payable to the City for the Project's contribution to the intersection improvements identified in the certified Environmental Impact Report. The bond or letter of credit will be subsequently reduced by the amount of the Regional Traffic Fee collected by the City for each Phase of the development. Fair Share fees paid by the Developer must be expended within five (5) years of receipt by the City of the initial bond or letter of credit toward improvements to the intersections identified for mitigation in the certified Environmental Impact Report, otherwise Developer's fair share obligation shall be null and void and returned to the Developer with respect to those intersections that are unimproved and the bond or letter of credit for an amount equal to the Developer's fair share, less applicable regional fees collected, anytime following the approval of a construction contract for the identified improvements by the lead agency. Regional and Local Traffic Fees are non-refundable.
- P25. The Developer shall participate in exploring the feasibility of adding transportation services to link businesses with multi-modal transit in cooperation with the City, other public agencies, and other local business interests.
- P26. Developer will employ all reasonable efforts such that the project will be built to, and certified in, accordance with LEED Standards.
- P27. The Developer shall submit a Notice of Proposed Construction or Alteration - Form 7460-1 to the Federal Aviation Administration, in accordance with Federal Aviation Regulation, Part 77 "Objects Affecting Navigable Airspace". Public Utilities Code Section 21659 prohibits structural hazards near airports.
- P28. The project is required to develop and implement a Transportation Demand Management (TDM) program. The TDM measures shall include:
- Provide on-site physical improvements, such as sidewalk improvements, landscaping and bicycle parking that would act as incentives for pedestrian and bicycle modes of travel.
 - Connect individual sites with regional bikeway/pedestrian trail system.
 - Provide on-site transit information kiosk.

- Implement a carpool/vanpool program, e.g., carpool ridematching for employees, assistance with vanpool formation, provision of vanpool vehicles, etc.
 - Develop a transit use incentive program for employees in the project area, such as on-site distribution of passes and/or subsidized transit passes for local transit systems.
 - Provide preferential parking for carpools.
 - Provide a guaranteed ride home program.
 - Implement a flextime policy.
 - Provide on-site services such as ATMs, dry cleaning facilities, exercise room, cafeteria, etc.
 - Provide or contribute to a shuttle system for employees to access local transit services within the City.
 - Provide showers and lockers for employees bicycling or walking to work.
 - Provide secure and conveniently located bicycle parking and storage for workers.
- P29. The VTA Community Design & Transportation (CDT) Guidelines and VTA Pedestrian Technical Guidelines shall be used as a guide to on site planning, building design, street design, preferred pedestrian environment, intersection design and parking requirements.
- P30. Provide a 10 feet by 55 feet bus stop pavement pad for the bus service and stop along the project site on San Tomas Expressway, north of Walsh Avenue, prior to the certificate of occupancy for any buildings on a parcel with frontage on Walsh Avenue.
- P31. The Project shall minimize construction vehicle trips during peak hour traffic conditions to the extent feasible.

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EXHIBIT D
MITIGATION MONITORING AND REPORTING PROGRAM

MITIGATION MONITORING AND REPORTING PROGRAM

**SAN TOMAS BUSINESS PARK
CAMPUS PROJECT**

CITY OF SANTA CLARA

OCTOBER 2008

P R E F A C E

Section 21081 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Final EIR concluded that the implementation of the project could result in a number of significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This Mitigation Monitoring and Reporting Program addresses those measures in terms of how and when they will be implemented.

This document does *not* discuss those subjects for which the Final EIR concluded that the impacts from implementation of the project would be less-than-significant.

MITIGATION MONITORING AND REPORTING PROGRAM SAN TOMAS BUSINESS PARK CAMPUS PROJECT				
Impact	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
AIR QUALITY				
Construction of the proposed project would result in short-term air quality impacts associated with dust generation. (Significant Impact)	1) Water all active construction areas at least twice daily or as often as needed to control dust emissions; 2) Cover all trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard; 3) Pave, apply water twice daily, or as often as necessary, to control dust, or apply non-toxic soil stabilizers on all unpaved access roads, parking areas and staging areas at construction areas; 4) Sweep daily, or as often as needed, with water sweepers all paved access roads, parking areas and staging areas at construction sites to control dust; 5) Sweep public streets daily, or as often as needed, to keep streets free of visible soil material; 6) Hydroseed or apply non-toxic soil stabilizers to inactive construction areas; 7) Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc); 8) Limit vehicle traffic speeds on unpaved roads to 15 mph; 9) Install sandbags or other erosion control measures to prevent silt runoff to public roadways; 10) Replant vegetation in disturbed areas as quickly as possible.	During construction phase.	Project applicant	Director of Planning and Inspection Director of Public Works
BIOLOGICAL RESOURCES				
Construction activities could result in the abandonment of active raptor nests or destruction of other migratory bird nests. (Significant Impact)	1) Construction shall be scheduled to avoid the nesting season to the extent feasible. The nesting season for most birds, including most raptors, in the San Francisco Bay area extends from February through August. 2) If it is not possible to schedule demolition and construction between September and January, then preconstruction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (May through August). During this survey, the ornithologist will inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with CDFG, will determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests will not be disturbed during project construction.	Prior to issuance of demolition or grading permits.	Project applicant.	Director of Planning and Inspection California Department of Fish and Game

Impact	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
CULTURAL RESOURCES Excavation of the project site may uncover unknown buried artifacts and/or human remains. (Significant Impact)	1) A qualified archaeologist will be on site to monitor the initial excavation of native soil once all pavement and engineered soil is removed from the project site. After monitoring the initial excavation, the archaeologist will make recommendations for further monitoring if it is determined that the site has cultural resources. If the archaeologist determines that no resources are likely to be found on site, no additional monitoring will be required. 2) In the event that prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-meter radius of the find will be stopped, the Director of Planning and Inspection will be notified, and the archaeologist will examine the find and make appropriate recommendations. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery during monitoring would be submitted to the Director of Planning and Inspection. 3) In the event that human remains are discovered during excavation and/or grading of the site, all activity within a 50-foot radius of the find will be stopped. The Santa Clara County Coroner will be notified and shall make a determination as to whether the remains are of Native American origin or whether an investigation into the cause of death is required. If the remains are determined to be Native American, the Coroner will notify the Native American Heritage Commission (NAHC) immediately. Once NAHC identifies the most likely descendants, the descendants will make recommendations regarding proper burial, which will be implemented in accordance with Section 15064.5(e) of the CEQA Guidelines.	During all phases of excavation of the site.	Project Applicant	Director of Planning and Inspection
HAZARDOUS MATERIALS Implementation of the proposed project could expose construction workers and nearby tenants to asbestos. (Significant Impact)	1) All potentially friable ACMs shall be removed in accordance with NESHAP guidelines prior to building demolition. All demolition activities will be undertaken in accordance with Cal/OSHA standards contained in Title 8 of CCR, Section 1529, to protect workers from exposure to asbestos. 2) A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in accordance with the standards stated above. 3) Materials containing more than one percent asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one percent asbestos shall be completed in accordance with BAAQMD requirements.	During demolition phase	Project Applicant	Director of Planning and Inspection Santa Clara Fire Department – Hazardous Materials Division OSHA

Impact	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
HAZARDOUS MATERIALS Continued				
<i>See Previous Page</i>	The demolition and removal of all building materials coated with lead-based paint will be completed in accordance with the CAL/OSHA Lead in Construction Standard requirements as found in Title 87 of the California Code of Regulations (CCR 1532.1).	<i>See Previous Page</i>	<i>See Previous Page</i>	<i>See Previous Page</i>
Construction activities on the project site could have a significant impact on construction workers exposed to contaminated soils and groundwater. (Significant Impact)	<p>1) Prior to the issuance of grading permits, shallow soil samples shall be taken to determine the location of contaminated soils with concentrations above established construction/trench worker thresholds. The soil sampling plan must be reviewed and approved by the Santa Clara Fire Department prior to initiation of work. Any contaminated soils found in concentrations above established thresholds shall be removed and disposed of according to California Hazardous Waste Regulations. The contaminated soil removed from the site shall be hauled off-site and disposed of at a licensed hazardous materials disposal site. 2) A Site Management Plan (SMP) will be prepared to establish management practices for handling impacted groundwater and/or soil material that may be encountered during site development and soil-disturbing activities. Components of the SMP will include: a detailed discussion of the site background; preparation of a Health and Safety Plan by an industrial hygienist; notification procedures if previously undiscovered significantly impacted soil or free fuel product is encountered during construction; on-site soil reuse guidelines based on the California Regional Water Quality Control Board, San Francisco Bay Region's reuse policy; sampling and laboratory analyses of excess soil requiring disposal at an appropriate off-site waste disposal facility; soil stockpiling protocols; and protocols to manage ground water that may be encountered during trenching and/or subsurface excavation activities. Prior to issuance of demolition permits, a copy of the SMP will be forwarded to the Santa Clara County Environmental Health Department, the Director of Planning and Inspection, and the Santa Clara Fire Department for review and approval.</p>	Prior to issuance of grading permits	Project Applicant	<p>Director of Planning and Inspection</p> <p>Santa Clara Fire Department – Hazardous Materials Division</p> <p>Santa Clara County Environmental Health Department</p>

Impact	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
<p>HYDROLOGY</p> <p>Construction activities would result in increase erosion which could cause the degradation of water quality within San Tomas Aquino Creek. (Significant Impact)</p>	<p>1) Burlap bags filled with drain rock will be installed around storm drains to route sediment and other debris away from the drains. 2) Earthmoving or other dust-producing activities would be suspended during periods of high winds. 3) All exposed or disturbed soil surfaces would be watered at least twice daily to control dust as necessary. 4) Stockpiles of soil or other materials that can be blown by the wind would be watered or covered. 5) All trucks hauling soil, sand, and other loose materials would be covered and all trucks would be required to maintain at least two feet of freeboard. 6) All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites would be swept daily (with water sweepers). 7) Vegetation in disturbed areas would be replanted as quickly as possible. 8) All unpaved entrances to the site will be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City. 9) Storm Water Permit will be administered by the RWQCB. Prior to construction grading for the proposed land uses, the project proponent will file an NOI to comply with the General Permit and prepare a SWPPP which addresses measures that would be included in the project to minimize and control construction and post-construction runoff. Measure will include, but are not limited to, the aforementioned RWQCB mitigation. 10) The project will submit a copy of the draft SWPPP to the City of Santa Clara for review and approval prior to construction of the project site. The certified SWPPP will be posted at the project site and will be updated to reflect current site conditions. 11) When the construction phase is complete, a Notice of Termination (NOT) for the General Permit for Construction will be filed with the RWQCB and the City of Santa Clara. The NOT will document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a post-construction storm water management plan. 12) As part of the mitigation for post-construction runoff impacts addressed in the SWPPP, the project will implement regular maintenance activities (i.e., sweeping, maintaining vegetative swales, litter control, and other activities as specified by the City) at the site to prevent soil, grease, and litter from accumulative on the project site and contaminating surface runoff. Stormwater catch basins will be stenciled to discourage illegal dumping. 13) The proposed project will be required to record an Operation & Management (O&M) agreement with the City to insure continued maintenance and performance of post-construction measures including CDS units and roof-drainage systems.</p>	<p>During construction phase and post-construction</p>	<p>Project applicant</p>	<p>Director of Planning and Inspection Regional Water Quality Control Board</p>

Impact	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
TRANSPORTATION				
Implementation of the proposed project would impact the level of service of eight local and regional intersections. These intersections include: 1) De La Cruz Boulevard/Central Expressway, 2) San Tomas Expressway/El Camino Real, 3) San Tomas Expressway/Benton Street, 4) San Tomas Expressway/Homestead Road, 5) San Tomas Expressway/Saratoga Avenue, 6) San Tomas Expressway/Stevens Creek Blvd, 7) McCarthy Boulevard-O'Toole Avenue/Montague Expressway, 8) North First Street/Montague Expressway	The City of Santa Clara will collect an impact fee equal to one dollar per square foot of development. In addition, the project proposes to pay a fair share contribution toward improvement of those impacted intersections for which there are currently approved and funded programs by the City of San José, the County of Santa Clara and/or the City of Santa Clara, as applicable. All fees will be paid directly to, and administered by, the City of Santa Clara.	Impact fee payable prior to issuance of building permits. Fair share contribution payable prior to issuance of occupancy permits	Project Applicant	Director of Planning and Inspection Director of Public Works

SOURCE

City of Santa Clara, **Final EIR for the San Tomas Business Park Campus Project**, October 2008.

EXHIBIT E INSURANCE REQUIREMENTS

Without limiting the Developer's indemnification of the City, and prior to commencing any of the activities provided for under this Agreement, the Developer shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$2,000,000 Each occurrence
\$2,000,000 General aggregate
\$2,000,000 Products/Completed Operations aggregate
\$2,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Developer; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Developer to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Developer and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Developer included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Developer or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Developer's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Developer shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be

called upon to contribute with Developer's insurance.

3. General Aggregate. The general aggregate limits shall apply separately to Developer's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. Cancellation. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this **Exhibit E**, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Developer and City agree as follows:

1. Developer agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Developer, provide the same minimum insurance coverage required of Developer, except as with respect to limits Developer agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Developer agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Developer agrees to be responsible for ensuring that no contract used by any party involved in any way with the Project reserves the right to charge City or Developer for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Developer in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any activities provided for under this Agreement, Developer, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Developer shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Developer or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Developer shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

City of Santa Clara [insert City department name here]
c/o Insurance Data Services - Insurance Compliance
P.O. 12010-S2 or 151 North Lyon Avenue
Hemet, CA 92546-8010 Hemet, CA 92543
Telephone: (951)766-2280; or
Fax: (951)766-2299

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Developer shall have, and provide written proof of, an A.M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.



November 13, 2008

To City Attorney:

As the Insurance Manager for NVIDIA Corporation, I am writing with regard to the proposed Development Agreement between the City of Santa Clara and NVIDIA. Under this Agreement, NVIDIA is to meet certain insurance requirements, including, but not limited to, Commercial General Liability insurance with Policy Limits no less than the following:

- \$2,000,000 Each Occurrence
- \$2,000,000 General aggregate
- \$2,000,000 Products/Completed Operations aggregate
- \$2,000,000 Personal Injury

Moreover, it requires that such coverage shall apply "...separately to each insured against whom a claim is made...".

NVIDIA's Commercial General Liability program does not meet the requirement of applying "separately to each insured"; however, NVIDIA does carry Policy Limits in the amount of \$75MM, well in excess of the requirements set forth in the Developer Agreement. We believe that our large amount of coverage will address any concerns the City of Santa Clara may have as respects to Commercial General Liability insurance, and that it is not necessary that the coverage apply separately to each insured against whom a claim may be made.

Regards,

A handwritten signature in dark ink, appearing to read "Paul Falo".

Paul Falo
Insurance Manager

Please acknowledge agreement by signature below:

A handwritten signature in dark ink, appearing to read "Helene Leichter".

Helene Leichter, City Attorney
City of Santa Clara

EXHIBIT F
SAN TOMAS BUSINESS PARK TRAFFIC FAIR SHARE MITIGATION AND COST

San Tomas Business Park Traffic Fair Share Mitigation and Cost

Intersection	Improvement Cost²	Project Share	Total
<i>Santa Clara County Intersections</i>			
San Tomas Expressway & Homestead	\$5,800,000	13.68%	\$793,420
San Tomas Expressway & Saratoga	\$506,000	17.72%	\$89,654
San Tomas Expressway & Benton	\$5,800,000	15.14%	\$877,838
Central Expressway & De La Cruz	\$100,000	6.86%	\$6,860
San Tomas Expressway & Stevens Creek	\$5,800,000	2.95%	\$170,875
San Tomas Expressway & El Camino Real	\$800,000	10.63%	\$85,029
<i>County Subtotal</i>			<u>\$2,023,676</u>
<i>San Jose Intersections</i>			
Montague Expressway & First Street	\$10,000,000	2.70%	\$270,175
Montague Expressway & McCarthy	\$68,000,000	2.58%	\$1,752,496
Montague Expressway & Trimble ¹	\$30,000,000	3.03%	\$907,618
<i>San Jose Subtotal</i>			<u>\$2,930,289</u>
Total			<u>\$4,953,965</u>

¹ No project or cumulative impact, because flyover assumed in background.

² Cost estimates for improvements at San Tomas/Saratoga and San Tomas/El Camino from City of Santa Clara 2008-09 Capitol Improvement Project Budget.
 Cost estimates for other Santa Clara County intersections from County Roads and Airports Division (Dan Collen).
 Cost estimates for City of San Jose intersections from San Jose Department of Transportation (Manuel Pineda).

PROOF OF PUBLICATION

Santa Clara News

P.O. Box 250, Santa Clara, California 95050

IN THE
County of Santa Clara
State of California

CITY OF SANTA CLARA

NOTICE OF HEARING ON A GENERAL PLAN AMENDMENT #71

CITY COUNCIL MEETING DECEMBER 2, 2008

Attest to the Honorable
Mayor of Santa Clara

The undersigned being duly sworn, depose and say that the foregoing is a true and correct copy of the text of the Notice of Hearing on a General Plan Amendment #71 as published in the Santa Clara News, a newspaper of general circulation in the County of Santa Clara, State of California, on December 1, 2008, at Santa Clara, California.

Notary Public

My Commission Expires

Subscribed and sworn to before me this _____ day of _____, 2008.

Notary Public for the State of California



My Commission Expires

The undersigned being duly sworn, depose and say that the foregoing is a true and correct copy of the text of the Notice of Hearing on a General Plan Amendment #71 as published in the Santa Clara News, a newspaper of general circulation in the County of Santa Clara, State of California.

CITY OF SANTA CLARA
NOTICE OF HEARING
GENERAL PLAN AMENDMENT #71
CITY COUNCIL MEETING
December 2, 2008

Project Name: San Tomas Business Park Campus Project - The approximately 35.6-acre project is located at 2600, 2800 San Tomas Expressway, and 2400 Condensa Street. The project is comprised of three developed parcels located on both sides of San Tomas Aquino Creek channel, south of Central Expressway. You are hereby notified that on Tuesday, December 2, 2008 at the hour of 7:00 p.m. in the City Council Chambers of City Hall, 1500 Warburton Avenue, Santa Clara, CA, the City Council will consider the matter described below. File Numbers: PLN2008-07176 (General Plan Amendment #71); PLN2008-07177 (Rezone ML to PD); PLN2008-07179 (Development Agreement); CEQ2008-01062 (Environmental Impact Report/ SCH#2008052011) Request: The project proposes a General Plan Amendment from Light Industrial to Office/Research & Development and rezoning to PD-Planned Development to allow for the demolition of existing structures on the site and the construction of up to 1,950,000 square feet of office/industrial development in buildings up to 132 feet tall. The proposed campus is intended as offices and high-tech lab facilities. Action to be considered include Certify Environmental Impact Report, and approval of General Plan Amendment, Planned Development Rezoning, and Development Agreement.

At the meeting you may be heard on this matter if you so desire. If you challenge this land use decision in court, you may be limited to raising only those issues you or someone else raised at these public hearings or in written correspondence delivered to the City at or prior to the close of the public hearings. Should you have any questions, please call the Planning Division office at (408) 615-2450. Written comments on this item are encouraged to be submitted to the Planning Division, City Hall, 1500 Warburton Avenue, Santa Clara 95050, by Wednesday afternoon of the week prior to the meeting so they can be included in the City Council Members' packets. Agenda and Staff reports and project files are available for public review on Friday afternoon the week prior to the meeting.

AMERICANS WITH DISABILITIES ACT (ADA) In accordance with the Americans with Disabilities Act of 1990, the City of Santa Clara will ensure that all existing facilities will be made accessible

to the maximum extent feasible. Reasonable modifications in policies, procedures and/or practices will be made as necessary to ensure full and equal access and enjoyment of all programs and activities for all individuals with a disability. Individuals with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities should contact the City's ADA office (408) 615-3000, to discuss meeting accessibility. In order to allow participation by such individuals, please do not wear scented products to meetings at City facilities.

Pub: 11/19/2008

CITY OF SANTA CLARA
AGENDA MATERIAL ROUTE SHEET

Council Date: 12/2/08

SUBJECT: Certify EIR, Adopt MMRP, approve General Plan
Amendment, approve Rezone, Approve Development Agreement -
2600, 2800 Santomas Expressway - 2400 Condessa St.
CERTIFICATION

The proposed Agenda Report as above
Regarding _____
has been reviewed and is hereby certified.

PUBLICATION REQUIRED:

The attached Notice/Resolution/Ordinance is to be published _____ time(s) at least _____ days before the scheduled meeting/public hearing/bid opening/etc., which is scheduled for _____, 200__.

AUTHORITY SOURCE FOR PUBLICATION REQUIREMENT:

Federal Codes:

Title _____ U.S.C. § _____
(Titles run 1 through 50)

California Codes:

Code _____ § _____
(i.e., Government, Street and Highway, Public Resources)

Federal Regulations:

Title _____ C.F.R. § _____
(Titles run 1 through 50)

California Regulations:

Title _____ California Code of Regulations § _____
(Titles run 1 through 28)

City
City Charter § _____ (i.e., 1310. Public Works Contracts. Notice published at least once at least ten days before bid opening)
City Code § _____

1. As to City Functions, by

Kevin L. Riley
Department Head

2. As to Legality, by

Heleene Hechter
City Attorney's Office / CAO Assignment No 08.1348

3. As to Environmental
Impact Requirements, by

Kevin L. Riley
Director of Planning and Inspection

4. As to Substance, by

J. Sparacino
City Manager

Revision Date June 7, 2005